



भारत का राजपत्र

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सं 14] नई दिल्ली, मार्च 31 — अप्रैल 6, 2013, शानिवार चैत्र 10 — चैत्र 16, 1935 (शक)
No. 14] NEW DELHI, MARCH 31 — APRIL 6, 2013, Saturday CHAITRA 10 — CHAITRA 16, 1935 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

भाग II — खण्ड 3—उप-खण्ड (ii)
PART II — Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह-मंत्रालय

नई दिल्ली, 26 मार्च, 2013

कांग्रेस 779.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरन में, गृह मंत्रालय के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञ रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप एतदद्वारा अधिसूचित करती है।

कार्यालय, महानिरीक्षक,
राजस्थान सेक्टर,
केन्द्रीय रिज़र्व पुलिस बल,
जयपुर (राजस्थान)-302023

[सं 12017/1/2012-हिन्दी]
अवधेश कुमार मिश्र, निदेशक (राजभाषा)

MINISTRY OF HOMEAFFAIRS

New Delhi, the 26th March, 2013

S.O. 779.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the

Union) Rules, 1976, the Central Government hereby notifies the following office of the Ministry of Home Affairs wherein the percentage of the staff having working knowledge of Hindi has gone above 80%.

Office of the Inspector General,
Rajasthan Sector,
CRPF Jaipur (Rajasthan)-302023

[No. 12017/1/2012-Hindi]
AVADHESH KUMAR MISHRA, Director(OL)

(श्री अनुग्रह)

नई दिल्ली, 1 अप्रैल, 2013

कांग्रेस 780.—शत्रु संपति अधिनियम, 1968 की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, एतदद्वारा श्रीमति के आर सेट, अधीक्षक, भारतीय शत्रु सम्पति अधिकारक कार्यालय, मुम्बई द्वारा नियुक्त करती है भारत के लिए शत्रु सम्पति सभीक्षक सहायक के रूप में मुम्बई शत्रु सम्पति अधिकारक कार्यालय में मुम्बई 01/10/2012 से प्राप्त के साथ मुम्बई या जब तक वह फुल्क है जो भी पहले हो जाती है।

[सं 37/51/2009-ईंग्लीश]
एस के अहूजा, अवर सचिव

(ENEMY PROPERTY SECTION)

New Delhi, the 01st April, 2013

S.O. 780.—In exercise of the powers conferred by Section 3 of the Enemy Property Act, 1968 the Central Government hereby appoints Smt. K.R. Seth, Superintendent in office of Custodian of Enemy Property, Mumbai as Assistant Custodian of Enemy Property for India, Mumbai in the office of Custodian of Enemy property, Mumbai with effect from 01/10/2012 or until she assumes duty, whichever is earlier.

[No. 37/51/2009-EP]
S.K. AHUJA, Under Secy.

**कार्मिक, लेक शिक्षायत तथा यौन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)**

नई दिल्ली, 3 अप्रैल, 2013

कानून 781.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं 25) की धारा 6 के साथ परिवर्त धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केरल राज्य सरकार, गृह (एम) विभाग, तिरुभन्तपुरम की दिनांक 29012013 की अधिसूचना जी०ओ०(एम०एस०) सं 28/2013/हेम द्वारा प्रत्यक्ष सहमति से एक व्यक्ति द्वारा पुलिस अधीक्षक, केन्द्रीय अन्वेषण ब्यूरो, कोच्चि का प्रतिरूपण करने से संबंधित पुलिस स्टेशन हेमंमबिका नगर, पलकड़ में पंजीकृत मामला अपराध सं 470/2012 तथा उपर्युक्त उल्लिखित अपराध के संबंध में या संबंद्ध में प्रयास, दुष्क्रिया तथा घड़यन्त्र तथा उसी संव्यवहार में किया गया या उहौं तथ्यों से उत्पन्न कोई अन्य अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों तथा क्षेत्राधिकार का विस्तार सम्पूर्ण केरल राज्य के सम्बन्ध में करती है।

[सं 228/17/2013-एवीडी-II]
राजीव जैन, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
(Department of Personnel and Training)**

New Delhi, the 3rd April, 2013

S.O. 781.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Kerala, Home (M) Department, Thiruvananthapuram *vide* Notification G.O. (Ms.) No. 28/2013/Home dated 29th January, 2013, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Kerala for investigation of case Crime No. 470/2012 registered at Police Station Hemambika Nagar, Palakkad relating to the impersonation by a person as the Superintendent of Police, Central Bureau of Investigation, Kochi and attempts, abetments and

conspiracy in relation to or in connection with the above mentioned offence and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F.No. 228/17/2013-AVD-II]
RAJIV JAIN, Under Secy.

**वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)**

नई दिल्ली, 01 अप्रैल, 2013

कानून 782.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, एतद्वारा, श्रीमती मंजरी ककड़ को अधिसूचना की तिथि से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, भारतीय जीवन बीमा निगम के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के रूप में नियुक्त करती है।

[फसं ए-15011/06/2012-बीमा- I]
प्रिया कुमार, निदेशक

**MINISTRY OF FINNACE
(Department of Financial Services)**

New Delhi, the 01st April, 2013

S.O. 782.—In exercise of the powers conferred by section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Smt. Manjari Kackar as part-time non-official Director on the Board of the Life Insurance Corporation of India for a period of three years from the date of Notification or until further orders, whichever is earlier.

[F.No. A-15011/06/2012-Ins-I]
PRIYA KUMAR, Director (Insurance)

नई दिल्ली, 2 अप्रैल, 2013

कानून 783.—गार्डीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उपखंड (1) और (2) के साथ परिवर्त बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्वारा, सेन्ट्रल बैंक आफ इंडिया के सहायक प्रबंधक श्री एस बी रेड (जम तिथि 15031957) को उकी नियुक्ति की अधिसूचना की तिथि से तीन वर्ष की अवधि के लिए अथवा सेन्ट्रल बैंक आफ इंडिया के अधिकारी कर्मचारी के रूप में उनके पदभार छोड़ देने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, सेन्ट्रल बैंक आफ इंडिया के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक के रूप में नियुक्त करती है जो माननीय उच्च न्यायालय, चैनै की 2012 की रिट याचिका संख्या 2220 के परिणाम के अध्यधीन होगी।

[फसं 9/16/2009-बीओ- I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 2nd April, 2013

S.O. 783.—In exercise of the powers conferred by clause (f) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of the The Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government after consultation with the Reserve Bank of India, hereby appoints Shri S.B. Rode (DoB: 15.03.1957), Assistant Manager, Central Bank of India, as Officer Employee Director on the Board of Directors of Central Bank of India for a period of three years from the date of notification of his appointment or until he ceases to be an officer of the Central Bank of India or until further orders, whichever is the earliest, subject to the outcome of the Writ Appeal No. 2220 of 2012 of Hon'ble High Court of Chennai.

[F.No. 9/16/2009-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 04 अप्रैल, 2013

कांगड़ा 784.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ परित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतदद्वारा, इलाहाबाद बैंक के महाप्रबंधक श्री वी.एस. कृष्णकुमार (जन्म तिथि: 01051955) को उनके द्वारा पदभार ग्रहण करने की तारीख से 30042015 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त कर लेने की तारीख तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, केन्द्र बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[फ० सं 4/5/2011-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 4th April, 2013

S.O. 784.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri V.S. Krishnakumar (DoB:01.05.1955), General Manager, Allahabad Bank as Executive Director, Canara Bank, with effect from the date of his taking over charge of the post and upto 30.04.2015, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[F.No. 4/5/2011-BO-I]
VIJAY MALHOTRA, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 18 मार्च, 2013

कांगड़ा 785.—इस मंत्रालय के दिनांक 25 मई, 2011 की समसंबंधित अधिसूचना के अनुक्रम में और चलचित्र (प्रमाण) नियम, 1983 के नियम 3 के साथ परित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार श्री असीम कैस्था को तत्काल प्रभाव से 3 वर्ष की अवधि के लिए या अगले आदेशों तक केन्द्रीय फिल्म प्रमाण बोर्ड के सदस्य के रूप में नियुक्त करती है।

[फ० सं 809/2/2010-एफ(सी)]
निरूपमा कोतरू, निदेशक (फिल्म)

MINISTRY OF INFORMATION AND
BROADCASTING

New Delhi, the 18th March, 2013

S.O. 785.—In continuation of this Ministry's Notification of even No. dated 25th May, 2011 and in exercise of the powers conferred by sub-section (1) of Section 3 of the Cinematograph Act, 1952 (37 of 1952) read with rule 3 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint Shri Aseem Kaistha as Member of the Central Board of Film Certification with immediate effect for a period of three years or until further orders.

[File No. 809/2/2010-F(C)]
NIRUPAMA KOTRU, Director (Films)

मानव संसाधन विकास मंत्रालय
(उच्चतर शिक्षा विभाग)
(राजभाषा यूनिट)

नई दिल्ली, 25 मार्च, 2013

कांगड़ा 786.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (उच्चतर शिक्षा विभाग) एवं (स्कूल शिक्षा और साक्षरता विभाग) के अंतर्गत ब्रम्भ: गुरु घर्सीदास विद्यालय, कोनी, बिलासपुर-495009 छत्तीसगढ़ तथा जगहाह नवोदय विद्यालय, अहमदनगर, महाराष्ट्र को, ऐसे कार्यालयों के रूप में जिसके 80 प्रतिशत से अधिक कर्मचारीकृद ने हिन्दी का कार्यसाधक ज्ञ प्राप्त कर लिया है अधिसूचित करती है।

[सं 11011-1/2013-राभा०ए०]
अनन्त कुमार सिंह, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(Dept. of Higher Education)
(O.L. Unit)

New Delhi, the 25th March, 2013

S.O. 786.—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of

the Union) Rules, 1976, the Central Government hereby notifies **Guru Ghasidas Vishwavidyalaya, Koni, Bilaspur-495009 Chhattisgarh** and **Jawahar Navodaya Vidyalaya, Ahmadnagar, Maharashtra** respectively under the Ministry of Human Resource Development, (Dept. of Higher Education) and (Dept. of School Education & Literacy) as offices, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-1/2013-O.L.U.]

ANANT KUMAR SINGH, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय
(उपभोक्ता मामले विभाग)
भारतीय मानक ब्यूरो

नई दिल्ली, 21 मार्च, 2013

कानून 787.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानक की संशोधन का विवरण नीचे अनुसूची में दिए गए हैं वह स्थापित हो गए हैं—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक	संशोधन संख्या और वर्ष	संशोधन लागू होने की तिथि
1	आई एस 9361: 1980 अल्लक्लोर दारों की विशिष्टि	संशोधन संख्या 3 वर्ष 2013	31 मार्च 2013

इस संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चैनई, मुम्बई, चंडीगढ़ तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पट्टना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: एफएडी/जी-128]

कुमार अनिल, वैज्ञानिक 'एफ एवं प्रमुख (खाद्य एवं कृषि)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(Department of Consumer Affairs)
BUREAU OF INDIAN STANDARDS

New Delhi, the 21st March, 2013

S.O. 787.—In pursuance of clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the amendment to the Indian Standard, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standards	No. & Year of the Amendment	Date of which the Amendment shall have effect
1.	IS 9361: 1980 Specification for alachlor granules	Amendment No. 3	31 March 2013 Year 2013

Copy of this standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kokatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. FAD/G-128]
KUMAR ANIL, Scientist 'F' and Head
(Food & Agri.)

नई दिल्ली, 25 मार्च, 2013

कानून 788.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1	आई एस 5986:2011 फ्लैंज कार्य एवं संरचना अभिरूपण हेतु तप्त बेल्लित इस्पात के फ्लैंट उत्पाद - विशिष्टि (तीसरा पुनरीक्षण)	आई एस 5986:2002 फ्लैंज कार्य एवं संरचना अभिरूपण हेतु तप्त बेल्लित इस्पात के फ्लैंट उत्पाद - विशिष्टि (दूसरा पुनरीक्षण)	31 जनवरी, 2013
2	आई एस 11513:2011 अतप्त बेल्लित प्रयोजनों हेतु तप्त बेल्लित कार्बन इस्पात की पत्ती - विशिष्टि (पहला पुनरीक्षण)	आई एस 11513:1985 अतप्त बेल्लित प्रयोजनों हेतु तप्त बेल्लित कार्बन इस्पात की पत्ती	1 जनवरी, 2013

इस भारतीय मानक की प्रतिवाँ भारतीय मानक ब्लूरे मानक भवन, 9 बहादुर शाह जपर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों, अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: एमटीडी 4/टी-129 & 177]

कू के खेर, वैज्ञानिक 'एफ एवं प्रमुख (एमटीडी)

New Delhi, the 25th March, 2013

S.O. 788.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule here to annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of the Indian Standard, if any, Superseded by the New Indian Standard	Date of Established
1	IS 5986:2011 Hot rolled steel flat products for structural forming and flanging purposes-Specification (third revision)	IS 5986: 2002 Hot rolled steel flat products for structural forming and flanging purposes-(second revision)	31 Jan., 2013
2	IS 11513:2011 Hot rolled carbon steel strip for cold rolling purposes-Specification (first revision)	IS 11513:1985 Hot rolled carbon steel strip for cold rolling purposes—	1 Jan., 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kokatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 4/टी-129 & 177]
U.K. KHER, Scientist F & Head (MTD)

नई दिल्ली, 26 मार्च, 2013

कानून 789.—भारतीय मानक ब्लूरे नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरे एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कई हो, की संख्या और वर्ष	स्थापित तिथि
1	आईएस 4209:2013 रसायन प्रयोगशाला सुरक्षा संहिता (दूसरा पुनरीक्षण)	—	31 जनवरी, 2013

इस भारतीय मानक की प्रतिवाँ भारतीय मानक ब्लूरे, मानक भवन, 9 बहादुरशाह जपर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ: सीएचडी 08/आईएस 4209]

एस एन्स चटर्जी वैज्ञानिक 'एफ एवं प्रमुख (रसायन विभाग)

New Delhi, the 26th March, 2013

S.O. 789.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standard Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
1.	IS 4209: 2013 Chemical Laboratories—Code of Safety (Second Revision)	—	31 January, 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian standard can be made at: <http://www.standardsbis.in>.

[Ref: CHD 08/IS 4209]

S.N. CHATTERJEE, Scientist—‘F’ & Head(CHD)

नई दिल्ली, 26 मार्च, 2013

कानून 790.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कई हो, की संख्या और वर्ष	स्थापित तिथि
1	आईएस 3025 (भाग 14): 2013/आईएसओ 7888:1985 जल और अपशिष्ट जल के नमूने लेने तथा परीक्षण (भौतिक एवं रसायन) पद्धतियाँ भाग 14 विशिष्टि चालकता (वीटस्टेन, बिज्ज, चालकता सेल) (दूसरा पुनरीक्षण)	—	31 जनवरी, 2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो मानक भवन, 9 बहदुर शाह जफर मार्ग, नई दिल्ली-110 002 क्षेत्रीय कार्यालयों, नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूर्ण तथा तिरुवनन्तपुरम में विक्री होते हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ: सीएचडी 32/आईएस 3025 (भाग 14): 2013/आईएसओ 7888:1985]

एस० एन० चटर्जी वैज्ञानिक—‘एफ एवं प्रमुख (रसायन विभाग)

New Delhi, the 26th March, 2013

S.O. 790.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standard Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
1.	IS 3025 (Part 14): 2013/ISO 7888:1985 Methods of Sampling and Test (Physical and Chemical) for water and waste paper Part 14 Specific Conductance (Wheatstone Bridge, conductance cell) (Second Revision)	—	31 January, 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian standard can be made at: <http://www.standardsbis.in>.

[Ref. CHD 32/IS 3025 (Part 14)/ISO 7888:1985]
S.N. CHATTERJEE, Scientist-‘F’ & Head (CHD)

नई दिल्ली, 26 मार्च, 2013

कानून 791.—भारतीय मानक ब्लूरे नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरे एतद द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कई हैं, की संख्या और वर्ष	स्थापित तिथि
1	आईएस 5785 (भाग 5)/आईएसओ 8022:1990 सतह सत्रिय अधिकर्मक- निमज्जन द्वारा आद्रकरण शक्ति ज्ञत करना भाग 5 आद्रकरण शक्ति (पहल पुनरीक्षण)	-	31 जनवरी 2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्लूरे, मानक भवन, 9 बहादुरशाह जफर मार्ग, नई दिल्ली 110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ सीएचडी 25/आईएस 5785 (भाग 5): 2013/आईएसओ 8022:1990]

एस एन चटर्जी, वैज्ञानिक-‘एफ एवं प्रमुख (रसायन विभाग)

New Delhi, the 26th March, 2013

S.O. 791.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standard Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
1.	Is 5785 (Part 5): 2013/ISO 8022:1990 Surface Active Agents—Determination of wetting power by immersion part 5 wetting power (First Revision)	-	31 January 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian standard can be made at: <http://www.standardsbis.in>.

[Ref. CHD 25/IS 5785 (Part 5):2013/ISO 8022:1990]
S.N. CHATTERJEE, Scientist- ‘F’ & Head (CHD)

नई दिल्ली, 28 मार्च, 2013

कानून 792.—भारतीय मानक ब्लूरे नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लूरे एतद द्वारा अधिसूचित करता है कि जिन भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गये हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1	आई एस 16070: 2013 गुणता प्रबंध पद्धतियांपॉवर सेक्टर उपकरण निर्माण, सेवा तथा युटिलिटी संगठन के लिए आईएसओ 9001:2008 के अनुप्रयोग की विशेष अपेक्षाएँ	-	28 फरवरी 2013

इस मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुरशाह जफर मार्ग, नई दिल्ली 110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलुरु, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, भागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एम एस बी/जी-8]
निर्मल कुमार पाल, कैर्यनिक 'एफ एवं प्रमुख (प्रबंध एवं तंत्र)

New Delhi, the 28th March, 2013

S.O. 792.—In pursuance of clause (b) of sub-rule (1) of Rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which is given in the Schedule hereto annexed has been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standard Established	No. & year of Indian Standard, if any, Superseded by the New Indian Standard	Date of Established
1.	Is 16070 : 2013 Quality management systems—particular requirements for the application of ISO 9001:2008 for power sector equipment manufacturing, service and utility organization.	-	28 February 2013

Copy of above Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices at Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: at Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. MSD/G-8 Notification]
NIRMAL KUMAR PAL, Scientist 'F' & Head
Management & Systems Department

नई दिल्ली, 28 मार्च, 2013

का अ 793.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1	आईएस 3910:2013/आई एस औ 2537:2007 जलमिति-धूर्णी एलीमेंट वाले करंट-मीटर (दूसरा पुनरीक्षण)	आईएस 3910: 1992	31/01/2013

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिन्दी हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संर्व डब्लू आर डी 1/T-7]
जे सी० अरोड़ा, वैज्ञ एफ एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 28th March, 2013

S.O. 793.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. Title and Year of the Indian Standards Established	No. & year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
1.	IS 3910: 2013/ISO 2537:2007 Hydrometry—Rotating-Element Current-Meters (second revision)	IS 3910:1992	31/01/2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD1/T-7]
J.C. ARORA, Sc-F& Head (Water Resources Deptt.)

नई दिल्ली, 28 मार्च, 2013

का० आ० 794.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कई हो, की संख्या और वर्ष	स्थापित तिथि
1	आईएस 1192:2013/आई एस ओ ओ 748:2007 जलमिति-करंट-मीट्रों या प्लॉटें के प्रयोग से खुले चैनलों में द्रव प्रवाह का मापन (दूसरा पुनरीक्षण)	आईएस 1192: 1981	31/01/2013

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिन्दी हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संर्व डब्लू आर डी 1/T-2]
जे सी० अरोड़ा, वैज्ञ एफ एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 28th March, 2013

S.O. 794.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. & year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
1.	IS 1192: 2013/ISO 748:2007 Hydrometry— Measurement of liquid flow in open channels using current-meters or floats (second revision)	IS 1192:1981	31/01/2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD1/T-2]
J.C. ARORA, Sc-F & Head (Water Resources Deptt.)

नई दिल्ली, 28 मार्च, 2013

का० आ० 795.—भारतीय मानक ब्लॉग नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लॉग एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई है, की संख्या और वर्ष	स्थापित तिथि
1	आईएस 9108:2013/आई एस औ 1438:2008 जलमिति-पतली- प्लेट के बांधों द्वारा खुले प्रणाल का प्रवाह मापन (पहला पुनरीक्षण)	आईएस 9108: 1979	31/01/2013

इस भारतीय मानक की प्रतिवाँ भारतीय मानक ब्लॉग, मानक भवन, 9 बहदुर शाह जपर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चार्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पट्टा, पूर्णे तथा तिस्कननतापुरम में बिन्द्री हेतु उपलब्ध है। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[सदर्भ डब्लू आर डी 1/T-22]
जे सी० अरोड़ा, वैज्ञ एफ एवं प्रमुख (जल संसाधन विभाग)
New Delhi, the 28th March, 2013

S.O. 795.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title Year of the Indian Standards Established	No. & year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
1.	IS 9108: 2013/ISO 1438:2008 Hydrometry— Open channel flow measurement using thin-plate weirs (first revision)	IS 9108:1979	31/01/2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD1/T-22]
J.C. ARORA, Sc-F & Head (Water Resources Deptt.)

नई दिल्ली, 28 मार्च, 2013

का० अ० 796.—भारतीय मानक ब्लू नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लू एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कई हो, की संख्या और वर्ष	स्थापित तिथि
1	आईएस 3912:2013/आई एस ओ 3454:2008 जलमिति-सीधे गहराई मापने और निलंबन के उपकरण (दूसरा पुनरीक्षण)	आईएस 3912: 1993	31/01/2013

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्लू, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिन्द्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[सर्वे डब्लू आर डी 1/T-9]
जे सी० अरोड़ा, वैज्ञ एफ एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 28th March, 2013

S.O. 796.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. & year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
1.	IS 3912: 2013/ISO 3454:2008 Hydrometry— Direct Depth Sounding and Suspension Equipment (second revision)	IS 3912:1993	31/01/2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD1/T-9]
J.C. ARORA, Sc-F & Head (Water Resources Deptt.)

नई दिल्ली, 28 मार्च, 2013

का० अ० 797 भारतीय मानक ब्लू नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लू एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1	आई एस 10060:2013 पावर हाउस द्वेष स्थलों के लिए भूतकनीकी जांच रीति संहिता (पहला पुनरीक्षण)	आई एस 10060:1981	31/01/2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्लू, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनंतपुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानक को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संदर्भ डब्लू आर डी 5/T-17]
जेसी अरोड़ा, वैज्ञ एफ एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 28th March, 2013

S.O. 797.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title & Year of the Indian Standards Established	No. & year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
1.	IS 10060:2013 Geotechnical Investigation for Power House Sites- Code of Practice (first revision)	IS 10060:1981	31/01/2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standards.bis.in>.

[Ref. WRD5/T-17]
J.C. ARORA, Sc-F & Head (Water Resources Deptt.)

नई दिल्ली, 28 मार्च, 2013

कानून 798.—भारतीय मानक ब्लू नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्लू एतद्वारा अस्तित्वात्मक है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1	आईएस 12752: 2013/आई एस ओ-8368:1999 जलमिति अंकलन- संरचनाओं के प्रयोग से खुले चैनलों में प्रवाह मापन- संरचना के चयन के मार्गदर्शी सिद्धांत (पहला पुनरीक्षण)	आईएस 12752: 1989	31/01/1013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्लू, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानक को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संदर्भ डब्लू आर डी 1/T-29]
जेसी० अरोड़ा, वैज्ञ-एफ एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 28th March, 2013

S.O. 798.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title & Year of the Indian Standards Established	No. & year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
1.	IS 12752:2013/ISO 8368:1999 Hydrometric determinations-Flow Measurements in Open Channels using Structures-Guidelines for Selection of Structure (first revision)	IS 12752:1989	31/01/2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD1/T-29]
J.C. ARORA, Sc-F & Head (Water Resources Deptt.)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 5 मार्च, 2013

कानून 799.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की थारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 93/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/03/2013 को प्राप्त हुआ था।

[सं. एल-1212/42/2011-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 5th March, 2013

S.O. 799.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. 93/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 05.03.2013

[No. L-12012/42/2011-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Wednesday, the 27th February, 2013

Present: A.N. JANARDANAN
Presiding Officer
INDUSTRIAL DISPUTE No. 93/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their Workman)

BETWEEN

Sri S.P.T. Sundaram 1st Party/Petitioner
Versus

The Dy. General Manager/Circle Head : 2nd Party/Management
Indian Bank
100-101 East Avani Moola Street
Madurai-1

Appearance:

For the Petitioner : Sri J. Suresh,
Authorized Representative

For the Management : M/s T.S. Gopalan & Co.,
Advocates

AWARD

The Central Government, Ministry of Labour *vide* its Order No. L-12012/42/2011-IR(b-II) dated 09.11.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"whether the action of the Management of Indian Bank in imposing the punishment of "Dismissal without notice" w.e.f. 30.09.2009 upon Sri S.P.T. Sundaram, Ex-Sub-Staff is legal and justified? What relief the concerned workman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 93/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim, Counter and Rejoinder Statement as the case may be.

3. The averments in the Claim Statement briefly read as follows:

The First Party Petitioner who joined as Sub-Staff under the Respondent during March 1997 was awarded punishment of dismissle without notice. While working at Sivagangai Branch he had been suspended on 07.01.2008. He was alleged of having prevailed upon Mr. R. Joseph. Sub-Staff, Kalayar Koil Branch to secret the 3 BP Cheques numbering 812,813 and 814 dated 07.12.2007 in the name of Santiago, C. Kulandaisamy and A. Vincent with IOB Kalayar Koil as the drawee branch respectively for amount 1,23,500/-, 124,500/- and 1,24,000/- purchased at Sivaganga Branch and thereafter sent for collection to Kalayar Koil Branch. (a) It was done by the petitioner in order to delay the presentation of the said cheque on the drawee bank's at Kalayar Koil. He also prevailed upon Mr. Suresh of Franch Express Couriers, Sivagangai to keep the tapal addressed to Service Branch, Madurai without sendin it to them to delay collection of cheques. (b) When on 25.01.2007 Mr. Baskar of M.s Green Land Harvest visited the branch for cash withdrawal from IBKC Account, First Party had demanded and received undue consideration of Rs. 1,000/- from him. (C) On 08.01.2008 petitioner alongwith Mr. Dhanpal, Mr. Santiago and three others visited the office of Franch Express Couriers and compelled Mr. Suresh to give a letter/written statement that he was forced by Vigilance Inspector, Mr. Ramabadrnan and Mr. Rajaram of Sivagangai Branch to give a complaint against him. Though petitioner submitted explanation, he was issued a Show Cause Notice on 13.05.2008 without any reference thereof. Another Show

Cause Notice dated 30.05.2008 alleging (a) that petitioner had connived with the then Branch Manager, Sri P. Rajaram and demanded and received bribe from Mr. Kottaiyan of Indira Nagar, Sivagangai (Husband of Mrs. K. Irulayee, whose loan application under the Land Purchase Scheme for Adi Dravidar and Tribal Women was sponsored to Indian Bank, Sivagangai Branch By TAHDCO). He had demanded and received a bribe of Rs. 5,000/- during June 2006 and another sum of Rs. 5,000/- on 25.08.2007 from the said Mr. kottaiyan. (b) on 30.10.2007 he demanded and received Rs. 20,000/- from Mr. P. Kottaiyan ostensibly as hand loan at the instance of Sri P. Rajaram, Branch Manager. He refused to return the amount when it was demanded back saying that it was due and set off for the loan amount given thus far. The First Party had pocketed the amount of Rs. 20,000/- as bribe. (c) Thus he took bribe as above in connivance with Mr. P. Rajaram. First Party Petitioner submitted replies to both the Show Cause Notices. Charge Sheet was issued on 25.06.2008 and enquiry was held. Nine exhibits marked and six witnesses were examined on the Management's side. There were two witnesses on the defence side but with no documents marked. The finding held all charges other than Charge No.4 as proved. First Party offered its comments. Second Show Cause Notice proposing punishment of dismissal without notice was issued on 14.09.2009. The same was imposed on 30.09.2009 despite submissions made. In the appeal dated 27.10.2009, the punishment was confirmed on 19.06.2010. The ID raised having ended in a failure report this reference is occasioned. The punishment is illegal, unjustified, in victimization, indiscrimination and unfair labour practice. He is made a scapegoat for no fault on his part. Management acted under a cadre based Bias Mr. Ramachandran, Clerk and Mr. P. Rajaram, Branch Manager were suspended alongwith petitioner. But Rajaram was reinstated within three months pending disciplinary proceedings leaving the other two in the lurch. The discrimination was meted out in the appeal decision. While both P. Rajaram and First Party were dismissed, in appeal decision, First Party's dismissal was confirmed without consideration. Allowing the appeal of the Manager, he was reinstated further allowing a peaceful and hon'ble retirement thereafter. P. Rajaram had been depicted by the IO as the abettor and active accomplice in the misconduct. The Branch Manager was the real culprit who masterminded it. Expecting highest standards of honesty and integrity on Sub-Staff alone rather than on the higher Officers is nothing but blatant discrimination and cadre based bias. *Interse* Award Staff, reinstating Mr. Ramachandran, Clerk, petitioner alone was dismissed, Second Party was bent upon targeting the Second Party (Actually First Party). Second Party created evidence instead of collecting it. Letter dated 16.07.2008 subsequent to date of Charge Sheet *i.e.* 25.06.2008 was relied on as a document as proof of the charge. The three complainants *viz.* Mrs. Irulayee Loanee. Mr. Suresh, Courier Man and Mr. Joseph, Sub-Staff of Kalayar Koil Branch were not

examined. No adverse inference was drawn by the EO for non-production of vital witnesses despite demand by the defence. So also R.C. Sundaram, Mr. Bharatidasan and P. Rajaram, Branch Manager were not examined but P. Kottaiyan was allowed to depose without any role. Complaints against the petitioner as a Sub-Staff are not sustainable. If at all the amount was received it could be on behalf of the Branch Manager. There was no demand from the First Party on his own. The complaints show a desperate mood of the complainant to get the loan sanctioned. Evidence is to be re-appreciated under Section-11A of the ID Act. Hence the petitioner is to be reinstated with all benefits.

4. The Counter Statement averments briefly read as follows:

Managers of Indian Bank have been given discretion to purchase cheque presented by an account holder and credit the account subject to clearance. Immediately after the purchase of the cheque the Branch will have to send the cheque for clearance without delay. In respect of three account holders of the Sivaganga Branch, cheques drawn on Indian Overseas Bank, Kalayar Koil Branch were presented and the petitioner engineered to see that the cheques sent for clearance were delayed to accommodate the account holders. During investigation on 28.12.2007 by Mr. R. Ramabadran, IO a phone call was received from one Mr. Baskar, Manager, Green land Harvest regarding petitioner's collection on demand a sum of Rs. 1000/- from him forcing one Mr. Suresh of M/s Franch Express Couriers to delay the despatch of the instruments to be sent to the Respondent's Service Branch at Madurai. Mr. Suresh gave a written statement about the same. On 08.01.2008 the petitioner with Mr. Dhanapal, Mr. Santiago and three others visited the office of M/s Franch Express Couriers and compelled Mr. Suresh to give a statement that he was forced by the Vigilance Officer, Mr. Ramabadran to give a complaint against him. Written complaint dated 19.04.2008 from one Mrs. K. Irulayee was received by the Chief Vigilance Officer as per which petitioner had received on demand a bribe of Rs. 5,000/- in June 2006 and Rs. 5,000/- on 25.08.2007 from Mr. M. Kottaiyan (Husband of Smt. K. Irulayee). Again on 30.10.2007 the petitioner similarly received Rs. 20,000/- from Mr. Kottaiyan ostensibly as a hand loan which the petitioner later refused to return on the ostensible reason that it was paid to the Branch Manager, Mr. Rajaram. Dismissal on the basis of misconduct proved in the enquiry is only justified and valid in law and is not liable to be interfered with. Action was initiated against the Branch Manager, Mr. Rajaram and Clerk, Ramachandran. Allegations against Mr. Rajaram were that he had violated the norms in the matter of purchase of cheques exceeding without authority

the credit discretionary limit, not informing the higher officials about the unauthorized purchase or extension of credit facilities and for not taking action against subordinates for certain irregularities noticed by him. For want of material evidence at the stage of investigation for the allegations, he was made to compulsorily retire which in appeal was modified to one of reduction to a lower grade of post. It is on finding, *inter alia* that he has not actively connived with Sri SPT Sundaram by asking him to take bribe. He is only negligent in following HO guidelines. So a lenient view is taken for valid reasons. Clerk, Ramachandran had facilitated the unauthorized transactions but was not involved in receiving bribe. So he was given lesser punishment. That petitioner received bribe is proved by direct evidence. The fact of receiving money from Mrs. Irulayee by petitioner has not been disputed, thus deserving different treatment. Modification of the punishment of the Branch manager would not absolve the guilt of the petitioner for the justification of the punishment awarded to him. Question of discrimination arises only with similarly placed persons. If treated differently He is not entitled to same treatment on par with others. Views of IO are not binding on the EO or DA. Receiving illegal gratification and act of mere irregularity deserve different treatment. Petitioner was given opportunity to vindicate his stand. It is immaterial whether petitioner had any power to help the borrower because of his position in the Bank. Evidence of Rajaram in not having received complaint against the petitioner from M. Irulayee would not mitigate the charge against him. The power under Section-11A is more to see whether an enquiry finding was truly uncalled for in the light of the material. Punishment is only to be upheld.

5. Rejoinder Statements in a nutshell are as follows:

Purchase of cheques by the Branch Manager to accommodate the account holders is admitted. Branch Manager alone was interested in delaying the un-authorizedly purchased cheques. Petitioner had no interest over the said cheques. Statement of Mr. Suresh would show that it bristles with too many contradictions. It can be seen that the allegations of Suresh are not based on facts but a figment of his own imagination. Suresh was not examined. It is evident that petitioner acted at the behest and instructions of the Branch Manager only. The Branch Manager himself instructed the party to meet the petitioner and act as per his directions and the said very fact evidences that Branch Manager was directly interested in the alleged transactions and in the ultimate benefit. Mrs. Irulayee had all along implicated the Branch Manager only as the main culprit. But she was kept behind the screen. They found a

convenient ploy in Mr. Kottaiyan. The acts of misconducts were not proved clearly in the enquiry. Justice has not flowed equally to all. Disciplinary Authority discriminated in the matter of punishment calling for interference. For what purpose Branch Manager exceeded his powers to accommodate the parties in violation of HO guidelines is to be pertinently answered. The drastic deviation is proof of the fact that Branch Manager was keenly interested in the illegal transactions and is the ultimate beneficiary. Every action of a person is propelled by certain motive as a normal human conduct. Branch Manager himself had demanded money as stated by Irulayee. Branch Manager supervising his staff, if fails to take a corrective action, on coming to know of illegal acts it amounts to conniving and colluding with the activity. Silence speaks for itself. Omission is no way different from commission. Branch Manager's complicity is there in the alleged acts. Suresh in his complaint had alleged that he had paid Rs. 250/- twice to Mr. Ramachandran. He also deposed in the enquiry likewise. Still Respondent's exonerating him shows partial attitude of the Respondent. The reasons of the Respondent for differential treatment are not logical and convincing. Denial of allegations against Respondent is without any plausible reason. Administration is duty bound to treat all employees equally without discrimination. Lenient view to the Branch Manager on the ground of no loss to the Bank is equally applicable to the petitioner since Branch Manager only decided to purchase a cheque. When the Branch Manager and the petitioner are not similarly placed, Branch Manager only committed more lapses. Branch Manager only had been the principal culprit in whose hand the petitioner was only a stooge. Views of Investigating Officer are based on investigation and enquiry only. None will be naive to act in rash and negligent manner encountering grave risk for no reason at all. Highest degree of honesty and integrity is to be expected from Senior Manager also occupying more responsible position. By not producing material witnesses opportunity of cross-examination to petitioner is denied to vindicate his stand. No reason is assigned for denying averments against the Respondent. Vital witnesses were not produced in the enquiry with a view to book the petitioner through hook or crook. P. Kottaiyan not related to the case was allowed to appear in the enquiry to depose. Without material evidence petitioner is alleged of having received bribe. If petitioner had actually demanded bribe any customer would have taken up the issue with the Branch Manager. Allegation is false and far from truth. Section-11A of the ID Act empowers Tribunal for re-appreciation of

the evidence to come to an independent conclusion about the proof of charge and gravity of punishment.

6. Points for consideration are:

- (i) Whether the punishment of dismissal without notice upon Sri SPT Sundaram, Ex-Sub-Staff is legal and justified?
- (ii) To what relief the concerned workman is entitled?

7. Evidence consists of testimony of WW1 and Ex. W1 to Ex. W20 on the petitioner's side and Ex. M1 to Ex. M39 marked on consent with no oral evidence adduced on the respondent's side.

Points (i) and (ii)

8. Heard both sides. Perused the records, documents, evidence and written arguments on petitioner's side. Both sides keenly argued in terms of their contentions in their respective pleadings. Going by the materials on record it could be found that the petitioner is guilty of the misconducts as have been proved in the enquiry. He has been meted out with punishment of dismissal without notice. As to whether the Branch Manager, who originally stood compulsorily retired as per the orders of the Disciplinary Authority has thereafter been reinstated into service with the imposition of some grade cut, whether petitioner has thereby been grossly discriminated against him on the basis of cadre based bias is a question calling for consideration. On a scrutiny of the materials, even as logically probative materials, it cannot be found to lead to the conclusion that the punishment of the petitioner amounting to his economic death resulted in on a cadre based bias meted out by the Management. From the materials sufficient indications are lacking to hold that the Branch Manager, Shri P. Rajaram has any connivance with the petitioner in fishing out the different amounts by the petitioner from any person. In the absence of any logically probative materials showing that the Branch Manager received or shared bribe amounts with the petitioner it cannot be found so. While the disciplinary Authority found the Branch Manager also to have had been an ally with the receiving of bribe by the petitioner, the finding of the Appellate Authority as per Ex. M 39 that there is no evidence or material to hold that the Branch Manager obtained bribe is only sound and reasonable. The finding and imposition of Compulsory Retirement by the Disciplinary Authority discernibly is in the absence of any materials. That the petitioner received bribe stands proved by clinching materials apart from not disputing it. There is discernibly no discrimination *inter se* the delinquents. It is also to be noted that results of investigation appearing as views of the Investigating Officer cannot be of evidence or even materials. As held in the decision in *Food Corporation of India Workers Union Vs. Food*

Corporation of India Workers Union Vs. Food Corporation of India and Another (1996-2-LLJ-920) rendered by the Apex Court "The only question was whether on weighing the probabilities the materials placed by the petitioner was acceptable or rendered probable". While invoking Section-11A of the ID Act the Court has to be circumspect to see whether an enquiry finding was wholly uncalled for in the light of the material. So viewed, there was no any material for the Disciplinary Authority to hold that the Branch Manager is guilty of accepting bribe, Despite that Disciplinary Authority was imposing on him punishment of Compulsory Retirement, which is uncalled for. Then it was for the Disciplinary Authority itself to leave the Branch Manager, scot free in relation to that charge. But that course was not resorted to by him which is unreasonable. To accuse cadre based bias against the Management the allegations have to be proved with materials rendering probability to the same. It cannot be by seeking reliance on conjectures or surmises or even presumptions, even if they are products of statute. In fact finding process technical rules of Evidence Act, which are at best tools of guidance have no application. When in the absence of evidence Disciplinary Authority chose to impose punishment of Compulsory Retirement upon the Branch Manager, the proper course would have been to hold that there is no evidence or material against the Branch Manager to punish him under that charge. The said error could only be seen to be rectified by the Appellate Authority by holding that Branch Manager is not guilty of connivance in accepting bribe by the petitioner. Hence it is difficult to read in any cadre based bias against the petitioner. Therefore on this ground also the punishment of the petitioner is not liable to be interfered with but on another ground of the petitioner being put to economic death by reason of his dismissal from service which is a punishment shocking to the conscience of the Court. It is deemed expedient to consider payment of some pro-rata pension to him, if applicable under relevant rules under the Bank since the petitioner has put in approximately 11 years of service, as on the date of his termination by converting his dismissal from service into Compulsory Retirement Ordered accordingly and the petitioner is entitled to the relief as above.

9. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th February, 2013)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri S.P.T. Sundaram
For the 2nd Party/Management : None

Documents Marked:

From the Petitioner's side

Ex. No.	Date	Description
Ex. W1	25.06.2008	Charge Sheet No. MCo:VG:DP:AS:410 issued to Shri SPT Sundaram
Ex. W2	27.12.2004	Complaint letter of Sri Suresh, marked as MEX 2 in the enquiry
Ex. W3	16.07.2008	Sivaganga branch letter enclosing the representation of Sri R.C. Sundaram, marked as MEX 3 in the enquiry
Ex. W4	19.04.2008	Letter from Mrs. Irulayee marked as MEX 4 in the enquiry
Ex. W5	17.05.2008	Investigation report of Sri R. Rambadran marked as MEX 6 in the enquiry alongwith enclosures
Ex. W6	-	Investigation report of Sri R. Rambadran marked as MEX 7 in the enquiry alongwith enclosures
Ex. W7	08.01.2008	Sivagangai branch letter addressed to Circle Office, Madurai
Ex. W8	18.05.2009	Defence summing up by the defence representative
Ex. W9	09.07.2009	Disciplinary Authority letter enclosing the Findings of the Enquiry Officer
Ex. W10	01.08.2009	Comments on Enquiry Officer's findings by Sri SPT Sundaram
Ex. W11	14.09.2009	Second Show Cause Notice issued by Asstt. General Manager/Disciplinary Authority, Circle Officer, Madurai
Ex. W12	30.09.2009	Speaking orders of Asstt. General Manager/Disciplinary Authority, Circle Office, Madurai
Ex. W13	27.10.2009	Appeal submitted by Sri SPT Sundaram to Deputy General Manager/Appellate Authority
Ex. W14	19.06.2010	Orders of the Deputy General Manager/ Appellate Authority
Ex. W15	09.07.2010	Petitioner under 2(A) of ID Act
Ex. W16	18.10.2010	Counter submitted by the Management for the ID
Ex. W17	04.11.2010	Rejoinder to the counter submitted by Sri SPT Sundaram
Ex. W18	11.06.2008	Charge Sheet issued to Sri K. Ramachandran, Clerk/Shroff, Indian Bank, Sivaganjai branch
Ex. W19	28.05.2009	Letter from Asst. General Manager/ Disciplinary Authority enclosing the findings of the enquiry Officer for the Departmental enquiry conducted against Sri K. Ramachandran
Ex. W20	30.09.2009	Speaking orders of Asstt. General Manager/Disciplinary Authority imposing the punishment order of Sri K. Ramachandran

From the Management's side					
Ex. No.	Date	Description			
Ex. M1	07.01.2008	Letter No. MCO/VIG/442/2007-08 issued to petitioner leveling certain allegation and placing under suspension effective from 07.01.2008	Ex. M19	(4)	- Record of interrogation of K. Rajaram—Asstt. Manager, Sivaganga Branch (Annexure-IV)
Ex. M2	29.01.2008	Memo ref. MCO/VG/DP/AS/408 issued to the petitioner calling for explanation in respect of allegations leveled against him	Ex. M20	(5)	— 14.05.2008—Record of interrogation of Rowthar Nainar (Annexure-V)
Ex. M3	11.02.2008	Explanation of petitioner to the Memo dated 29.01.2008	Ex. M21	(6)	— Record of Interrogation of C. Selvaraj—Clerk/Shroff (Annexure-VI)
Ex. M4	13.05.2008	Show Cause Memo bearing ref. MCO/UG/DP/AS/408 issued to petitioner Reply of petitioner to the Show Cause Memo dated 13.05.2008	Ex. M22		— Relevant extract investigation of Ramabadran— Pages 8, 9 and 10 with annexure
Ex. M6	30.05.2008	Another Show Cause Notice bearing No. MCO/CG/DP/AS/410 issued to petitioner calling for his explanation	Ex. M23	10.12.2007	Copy of branch despatch register
Ex. M7	21.06.2008	Reply of petitioner to the Show Cause Notice dated 30.05.2008	Ex. M24	08.01.2008	Letter of Manager, Sivaganga Branch addressed to Indian Bank, Circle Office, Madurai
Ex. M8	25.06.2008	Charge Sheet bearing No. MCO/VG/DP/AS/410 covering Show Cause Notice dated 13.05.2008 and 30.05.2008 and also referring to petitioner's reply dated 30.05.2008 and 21.06.2008	Ex. M25	18.05.2007 to 30.11.2008	Statement of Account of M/s Green Land Harvest with the branch
Ex. M9	31.10.2008 06.01.2009 07.01.2009 17.03.2009	Proceedings of enquiry held against the petitioner in respect of charge sheet dated 25.06.2008	Ex. M26	13.04.2009	Presenting Officer's summing up in respect of enquiry conducted against the petitioner against Charge Sheet No. 410 dated 25.06.2008
Ex. M10	27.12.2007	Letter of R. Joseph, Sub-Staff of Kalayar Koil Branch	Ex. M27	20.09.2009	Reply to Petitioner to the 2nd Show Cause Notice dated 14.09.2009
Ex. M11	27.12.2007	Letter of S. Suresh	Ex. M28	02.01.2008	Report of Investigation of Ramabadran—Sr. Manager, Vigilance Department on the allegation of purchase of cheques from various parties etc., in respect of investigation conducted during December, 2007
Ex. M12	16.07.2008	Letter from R.C. Sundaram addressed to Indian Bank, Sivaganga in Tamil with liberal translation in English	Ex. M29	—	Annexure-I—Itemwise details of cheques purchased on 01.08.2007 to 26.12.2007
Ex. M13	19.04.2008	Complaint of Mrs. K. Irulayee addressed to Vigilance Officer, Indian Bank, Chennai	Ex. M30	26.12.2007	Annexure-II—Recast cheque BP details of M/s Sundaravalli Coirs, Muthu Irulandi Coirs and Shanthi Blue Metal
Ex. M14	28.12.2007	Statement of A. Senthilraja—Asstt. Manager—Agri, Sivaganga Branch addressed to Vigilance Department, Chennai	Ex. M31	26.12.2007	Annexure-III—List of BP cheques returned unpaid from 01.08.2007 to 26.12.2007
Ex. M15	17.05.2008	Report of Investigation by R. Ramabadran—Sr. Manager—HO, Vigilance Department with Six Enclosures	Ex. M32	27.12.2007	Annexure-IV—Statement dated 27.12.2012 of Josept—Sub-Staff, Kalayar Koil Branch
Ex. M16 (1)		— 14.05.2008—Record of interrogation by P. Kottayam, Husband of Mrs. K. Irulayee— Borrower and Complainant (Annexure-II)	Ex. M33	27.12.2007	Annexure-V—Statement dated 27.12.2007 of Suresh of Franch Express Couriers, Kalayar Koil
Ex. M17 (2)		— 14.05.2008—Record of interrogation of S. Bharadidasan, Indira Nagar, Sivaganga (Annexure-II)	Ex. M34	28.12.2007	Annexure-VI—Record of Interrogation dated 28.12.2007 of SPT Sundaram—Petitioner
Ex. M18 (3)		— 14.05.2008—Record of interrogation of SPT Sundaram—Sub-Staff, Sivaganga Branch	Ex. M35	28.12.2007	Annexure-VII—Record of interrogation dated 28.12.2007 of K. Ramachandran, Clerk, Sivaganga Branch
			Ex. M36	28.12.2007	Annexure-VIII—Statement dated 28.12.2007 of Senti Raj—Asstt. Manager—Agri, Kalayar Koil Branch
			Ex. M37	-	Annexure-IX—List of STPL Accounts (Short Term Production Loan)
			Ex. M38	01.10.2009	Order of disciplinary authority issued to P. Rajaram—Sr. Manager—Sivaganga Branch
			Ex. M39	-	Order of Appeal preferred by the Branch Manager, Sri P. Rajaram.

नई दिल्ली, 5 मार्च, 2013

काथा 800.—ऑद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधित के संबद्ध में नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अमन्यालय, चैर्स के पंचाट (संदर्भ संख्या 81/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 5/03/2013 को प्राप्त हुआ था।

[सं. एल-12012/95/2007-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 5th March, 2013

S.O. 800.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. 81/2007 of the Central Government Industrial Tribunal/Labour Court, CHENNAI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of PUNJAB NATIONAL BANK and their workman, which was received by the Central Government on 05.03.2013

[No. L-12012/95/2007-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 25th February, 2013

Present : A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 81/2007

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Punjab National Bank and their Workman)

BETWEEN

Sri P. Sekaran : 1st Party/Petitioner

Vs.

The Functional Manager (HRD) : 2nd Party/Management
Punjab National Bank
160, Greams Road,
Chennai-600 006

Appearance:

For the 1st Party/Petitioner : M/s Balan Haridas, Advocates
For the 2nd Party/Management : M/s Jayaraman & H. Balaji, Advocates

AWARD

The Central Government, Ministry of Labour *vide* its Order No. L-12012/95/2007-IR(B-II) dated 27.11.2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the order of dismissal without notice imposed on Sri P. Sekaran by the management of Punjab National Bank, Chennai is legal and justified? If not, to what relief the workman is entitled?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 81/2007 and issued notices to both sides. Both sides entered appearance through authorized representative. On challenge of the order dated 18.01.2008 not permitting the petitioner to engage a legal practitioner, further proceedings in the ID stood stayed by the Hon'ble High Court of Madras by order dated 12.02.2008 and by the order dated 30.07.2012 in WP No. 3562 of 2008, the said order was set aside, the matter was remanded for fresh disposal in a time-bound manner and the petitioner was permitted to engage a counsel with similar right to the Respondent Management. Accordingly both sides made representation through their respective counsel. Afterwards both sides filed their claim, counter and reply statement as the case may be.

3. The averments in the Claim Statement briefly read as follows:

Petitioner who had joined service of the Respondent as a Clerk-cum-Godown Keeper on 23.04.1984, thereafter on successive transfers while was working at West Boulevard Branch, Trichy was suspended on 22.04.2003 pending enquiry. He was issued Show Cause Notice dated 23.09.2003 regarding renewal of three Fixed Deposit Receipts and alleged taking away of Pay Order relating to one Sri C. Velusamy. On 19.11.2003 he denied the allegations. Thereafter he was issued Charge Memo on 04.11.2004 which he also denied in the reply. An enquiry was held without considering his explanation. Five witnesses on the side of the Bank and two witnesses on the defence side were examined. By the finding the charges were held proved to which petitioner offered comments stating it to be perverse. Disciplinary Authority concurring with the finding by Show Cause Notice dated 18.03.2006 proposed the punishment of dismissal without notice. He was dismissed from service without notice on 31.03.2006. Appellate Authority by a cryptic order dated 30.06.2006 dismissed the appeal in a mechanical manner without applying mind. The allegations are untrue. One C. Thangaraj took a Fixed Deposit on 14.11.1997 for Rs. 80,000/- for 13 months which got matured on 14.12.1998. Another Fixed Deposit for Rs. 85,000/- dated 14.11.1997 for 13 months and Fixed Deposit for Rs. 85,000/- dated 14.11.1997 for 13 months were also matured as early as 14.12.1998, but not renewed. Hence the three Fixed Deposits were carried forward to the overdue Fixed Deposit Ledger as per practice and rule. The petitioner prepared vouchers signed

by the Officer, the enclosures to which were stapled. He also prepared ledger sheet. The Fixed Deposit Receipts were thereafter generated by the concerned and same singed by the Manager and Officer. Delivery of the receipts to the party was not done by the petitioner. The Fixed Deposits of Sri C. Thangaraj was renewed for Rs. 88, 102/-, that of S. Annalakshmi was renewed for Rs. 93,609/- and third was renewed for Rs. 93,609/- The three Fixed Deposits were again renewed and entries and vouchers were made by Vasudevan and Cashier Mr. Nair. Pay Orders also have been issued by the Officer and Manager concerned. Petitioner was not involved in the process of renewal. There is no mention of token under which the payments were made. Except the voucher for the first renewal petitioner had not part in the subsequent renewal or towards the issuance of the Pay Order or encashment thereof. No complaint has been made for non-receipt of the FD proceeds by Annalakshmi and Vasudevi. Petitioner, a Clerk had only renewed the Fixed Deposits as per Bank Manager's instructions. Once the voucher is authorized by the Manager it only confirms the transaction as perfect in all respect and the writing of the voucher is no longer questionable. Manager Vishwanathan has admitted his having signed the voucher and the Fixed Deposit Receipts. The enclosures to the voucher dated 07.03.2001 were missing. According to Arockiadass when enclosures are not available it will be reported to the Branch Manager. There is no legal evidence to show that petitioner was following up the matter and that the payment out of the Fixed Deposit was received by the petitioner. T. Narayanan, Son of Sri Thangaraj as claimed has not mentioned in Ex.-PD24 letter that he had met the petitioner and informed his father's death. T. Narayanan never met the petitioner. While others were punished with increment cut petitioner is dismissed without notice. There is no evidence to show that petitioner had removed the cash order on 26.02.2003. The Cash Order being time-barred no question of the stale Cash Order being made use of to open Fixed Deposit on the same at WB Road Branch does arise. Based on the voucher Fixed Deposit was made in the name of Sri Velusamy without obtaining Account Opening Form. Since petitioner was canvassing Fixed Deposit he was merely asked to obtain the AOF form the customer. How voucher for making Fixed Deposit was made on the basis of a stale Cash Order. It was not petitioner who opened the ledger sheet. C. Velusamy's National Savings Loan Account had been closed on 03.10.2001. So there was no necessity for Cash Order dated 19.04.2002 for Rs. 10,700/- to be in Velusamy's name. The letter itself will show that all was not well in the industrial area branch. Enquiry Officer held

the charge proved with tutored deposition of K. Ramanan, Officer and Mr. R. Thiagarajan. They had candidly admitted that the debit sundries and credit fixed deposit voucher and fixed deposit ledger were authorized by them. It was also admitted that Cash Order was received by Clerk, Valliappan and he prepared the voucher for including the instrument in the day's clearing. He was not examined without any reason. Petitioner has been made a scapegoat for the folly of others. There is no application of mind by the Enquiry Officer in entering the finding. He exceeded his brief and split up the charges on presumption and assumption. Petitioner has rendered 22 years of unblemished service and he hails from a very poor family. He is not gainfully employed. He cannot be punished on an allegation not proved in the enquiry. Enquiry held is violating principles of natural justice. As per HO guideline any payment above Rs. 20,000/- has to be made in Cash Order and the recipient has to prove his identity. It is alleged by the officials that the petitioner identified the customer and only on that basis they have passed the payment. Petitioner has not identified the beneficiary. ID raised having failed the reference is occasioned. Petitioner is imposed capital punishment to have the higher-ups. Punishment is grossly disproportionate to the charges. Tribunal is to interfere under Section-11A of the ID Act. Petitioner is to be reinstated with all benefits.

4. Counter Statement averments bereft of unnecessary details are as follows:

Petitioner was charge sheeted for preparing on 07.03.2001 vouchers for three Fixed Deposits dated 14.11.1997 favouring Sri C. Thangaraj, Ms. Annalakshmi and Vasudevi for Rs. 80,000/-, Rs. 85,000/- and Rs. 85,000/- respectively for 48 months from 14.12.1998 without any letter of request from the beneficiary or authority. The FD Accounts were renewed without receiving the original FDRs despite the fact that there were unauthenticated alterations in maturity value and due date. Rate of interest and due date in the ledger sheets needed authentication. Fresh FD Receipts were issued at the time of renewal instead of noting the details in the original FDRs, not produced. Instead of the old ledger sheets he carried out all the details of the FDRs to a new ledger sheet for making the alterations in initials of the beneficiary of FDR Account Number 34070 of Thangaraj from C to G and also changing the address of the party. He had also created record in the new ledger sheets as if fresh AOF Form-15 H and photographs were obtained and in fact neither AOF nor Form-15H and photograph were obtained. The purpose of taking fresh AOF and photograph were not recorded

without ensuring whether the originals of the same are available or not. He prepared the vouchers for renewal of FD Account of Sri Thangaraj knowing well that the party was no more and reported expired. On 17.12.2002 FDR Account 3470 was renewed as ordinary FDR No. 464 for a period of 30 days for Rs. 1,33,363/- due on 13.01.2003 with maturity value of Rs. 1,33,884/- in the name of G. Thangaraj. On 13.01.2003 the FDR Account was closed and the proceeds of the same were paid by Cash Order dated 13.01.2003 in the name of G. Thangaraj to a person on 14.01.2003. He also verified the signature of G. Thangaraj on the back of Cash Order without any authority knowing fully well that the signature does not belong to the original beneficiary. Similarly FDRs favouring Ms. Annalakshmi and Vasudevi were renewed as ordinary Fixed Deposit A/c No. 465 for Rs. 1,41,699/- and Account No. 466 for Rs. 1,41,699/- both due on 13.01.2003 respectively. On 21.01.2003 FD Accounts in the name of Ms. Annalakshmi and Vasudevi were closed for maturity value of Rs. 1,42,252/- each keeping part of amount of Rs. 1,00,000/- each which were placed in ordinary Fixed Deposit for 91 days. Balance amount of Rs. 42,252/- as interest was issued by Cash Order dated 21.01.2003 each in the names of Ms. Annalakshmi and Vasudevi. The Cash Orders were paid to some fictitious persons in their names on 26.02.2003. On 26.02.2003 petitioner visited Branch Office, Industrial Area, Trichy though he was posted at WB Road, Trichy on the pretext of collecting his Income Tax details and verified the signatures of the beneficiary of the above Cash Orders without authority knowing that the signatures do not belong to the original beneficiary. On 17.01.2002 he posted the transactions of renewal of all the above three FDRs in the ledger through computer. He had requested the Cashier to make the payments in 500 denominations. He was present on the date of payment of the proceeds of all the FDRs to some persons and was instrumental in getting the payment fraudulently to some fictitious persons. On 26.02.2003 during visit to the Branch he had unauthorizedly taken Cash Order dated 19.04.2002 for Rs. 10,700/- favouring Sri C. Velusamy from the Loans Department and handed over at BO, WB Road for placing the FD in the name of Sri Velusamy without AOF or other documents. For the same FDR was prepared on 28.02.2003. Sri Velusamy informed that he neither received nor presented the Pay Order to BO, WB Road. In the departmental enquiry held he was given all opportunities and principles of natural justice were observed which is demonstrable from the proceedings itself. Preparation of renewal vouchers by the CE is the starting point of the fraud. Even if under the instructions of the Branch Manager he should have noted so and marked caution in the

ledger vouchers, etc. It is proved that CE had influenced the payment by personally bringing the vouchers to the Manager telling that he knew the depositor. That his confession statement was obtained by coercion is not proved. In fact by letter dated 12.04.2003 in his own handwriting he admitted the charges, though later withdrawn. There is no proof of any prejudice having been caused to the petitioner in the enquiry. There is no hostile discrimination. The orders of the authorities are speaking manifesting application of mind. There is nothing perverse in the orders. There is no proof of Manager having given instructions for renewal of the FDRs. The charges have been properly proved in the enquiry. There is no violation of principles of natural justice. Finding is not perverse. The punishment is commensurate with the gravity of the misconduct. Section-11A of the ID Act is not to be applied. ID is to be dismissed.

5. Rejoinder averments in a nutshell are as follows:

In the absence of legal evidence the finding rendered is perverse. The supervisory officials for their misconducts should have been jointly enquired into with the petitioner.

6. Points for consideration are:

- (I) Whether the dismissal without notice imposed on Sri P. Sekaran is legal and justified?
- (II) To what relief the concerned workman is entitled?

7. The evidence consists of oral evidence of WW1 and Ex.W1 to Ex.W73 with no evidence on the side of the Respondent which is *ex parte*.

Points (i) & (ii)

8. Heard the petitioner's counsel, perused the records, documents and the evidence adduced on behalf of the petitioner by way of Proof Affidavit in lieu of Chief Examination. The Respondent though appeared and filed counter statement at the fag end of the enquiry, remained absent and was set *ex parte*. What is available on record is the unchallenged testimony of the petitioner by way of Proof Affidavit in lieu of Chief Examination and the documents exhibited as Ex.W1 to Ex.W73. Going by the records especially the enquiry proceedings and the finding it is brought home that there is no force in the contentions on behalf of the petitioner that the enquiry has been conducted violating the principles of natural justice or that the finding is perverse. It could well be seen that the petitioner has had full opportunity to participate in the enquiry, as pleaded and he died examine witnesses on his side. Allegation that the finding is perverse could also be found to be totally false. There is also the confession statement of the petitioner, later alleged as having been obtained on coercion, but without being substantiated. While he alleges the enquiry as being not fair and that

the finding is perverse there is no proof of prejudice. There is nothing wrong with the enquiry. There is no perversity in the finding. Though, the evidence adduced on behalf of the petitioner is by way of Proof Affidavit in lieu of Chief Examination not tested under the touch stone of Cross-Examination because of the Second Party being absent and set *ex parte*, the evidence is still good provided what is disclosed by way of swearing are not versions inherently improbable or intrinsically infirm, which is so. Any material logically probative to a prudent mind and is credible may form basis of such conclusion. It is not adequacy of evidence, but some legal evidence which is required to arrive at the conclusion. The enquiry proceedings coupled with the finding of the enquiry and the order of the Appellate Authority provide sufficient materials to come to the conclusion that there is nothing wrong with the enquiry and that the finding is not perverse.

9. Now coming to the punishment, the question is whether the same is shockingly disproportionate to the gravity of the misconduct. While from the proved facts the petitioner could legitimately be found guilty of the misconduct and has been so found what remains for consideration is regarding his punishment. While an employee like the petitioner with propensity to commit misconduct as in the present case is not safe or warranted to continue him in service, he must inevitably be sent out. The said purpose could well be achieved by imposing a punishment of Compulsory Retirement from service. In that case he could get his superannuation benefits. He could be saved from being put to an economic death. He has already rendered 22 years of service which he claims to be unblemished, whatever it be. In having not taken into account the period of service already rendered by him visiting him with the capital punishment as herein imposed, sounds shockingly disproportionate to the gravity of the misconduct. Though question as to punishment lies within the privilege of the Management, if and when that is not done with a sense of proportion, thereby shocking the conscience of the Court, it is within the legitimate and reasonable power of this Court to interfere and direct the Management to modify the punishment to meet the ends of individual justice. Therefore, it is ordered that the punishment without notice be modified and reduced to one of Compulsory Retirement entitling the petitioner to his superannuation and other benefits. The petitioner is entitled to relief as above.

10. Thus, the reference is answered accordingly. (Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 25th February, 2013)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri P. Sekaran
For the 2nd Party/Respondent : None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ex. W1	07.03.2001	Debit CA OD Transfer Voucher
Ex. W2	07.03.2001	Debit FD MBD 3470 G. Thangaraj transfer voucher
Ex. W3	07.03.2001	Debit FD MBD 3471 S. Annalakshmi transfer voucher
Ex. W4	07.03.2001	Debit FD MBD 3472 S. Vasudevi transfer voucher
Ex. W5	07.03.2001	PD 5—FDMBD receipt A/c No. 3470
Ex. W6	14.11.1997	Copy of FD MBD Ledger Sheet in the name of G. Thangaraj A/c No. 3470
Ex. W7	14.11.1997	Copy of FD MBD Ledger Sheet in the name of S. Annalakshmi A/c No. 34571
Ex. W8	14.11.1997	Copy of FD MBD Ledger Sheet in the name of S. Vasudevi A/c No. 3472
Ex. W9	07.03.2001	Copy of FD MBD Ledger Sheet in the name G. Thangaraj A/c No. 3470
Ex. W10	07.03.2001	Copy of FD MBD Ledger Sheet in the name of S. Annalakshmi A/c No. 3471
Ex. W11	07.03.2001	Copy of FD MBD Ledger Sheet in the name of S. Vasudevi A/c No. 3472
Ex. W12	12.04.2003	Letter of the Petitioner
Ex. W13	19.04.2002	Copy of Cash Order favouring C. Veluchamy
Ex. W14	13.01.2003	Copy of Cash Order favouring Thangaraj
Ex. W15	21.01.2003	Copy of Cash Order favouring S. Vasudevi
Ex. W16	21.01.2003	Copy of Cash order favouring S. Annalakshmi
Ex. W17	28.02.2003	Copy of Cleaning Credit Sundries Voucher
Ex. W18	01.03.2003	Copy of Transfer Debit Sundries voucher
Ex. W19	01.03.2003	Copy of Transfer Voucher for FD Ordinary
Ex. W20	01.03.2003	Copy of FD Ordinary Receipt in the name of Veluchamy
Ex. W21	01.03.2003	Copy of Ledger Sheet in the name of Veluchamy
Ex. W22	27.10.1998	Copy of Death Certificate of S. Thangarasan Munaiyathiriyan
Ex. W23	18.11.1998	Copy of Legal Heir Certificate of PD 20-Thangarasan Munaiyathiriyan
Ex. W24	29.03.2003	Letter of the Petitioner
Ex. W25	14.05.2005	Letter of the PO Furnishing list of additional 4 documents

Ex. W26	19.11.2004	Letter of the Petitioner
Ex. W27	February 2003	Copy of the Attendance Register
Ex. W28	02.04.2003	Copy of letter of V. Veluchamy
Ex. W29	28.02.1997	Copy of demand/term loan sheet of C. Veluchamy
Ex. W30	01.10.2001	Computer Print Out of Statement of Account of Veluchamy
Ex. W31	01.10.2001	Computer Print Out of Statement of Account of Veluchamy
Ex. W32	22.02.2001	Copy of FD due date reminder
Ex. W33	16.06.2005	Letter of the Senior Manager
Ex. W34	14.06.2005	Letter of the PO addressed to the Senior Manager
Ex. W35	14.11.1997	Copies of three counter foils
Ex. W36	—	Copies of FB MBD Receipts of A/c No. 3470
Ex. W37	06.01.2005	Letter of the Petitioner
Ex. W38	14.11.1997	Copy of FD MBD Receipt issued to Thangaraj
Ex. W39	—	Copy of FD MBD Receipt issued to Thangaraj Copy of FD MBD Receipt issued to S. Annalakshmi
Ex. W40	14.11.1997	Copy of FD MBD receipt issued to Vasudevi
Ex. W41	07.03.2001	Counter Foil of FD MBD Receipt of Thangaraj
Ex. W42	14.11.1997	Copy of FD MBD Receipt issued to Vasudevi with backside of the receipt
Ex. W43	14.11.1997	Counter Foil of FD MBD receipt of Thangaraj with backside of the receipt
Ex. W44	13.01.2003	Debit Transfer Voucher
Ex. W45	13.01.2003	Copy of the computer print out for closing of FDO A/c
Ex. W46	07.03.2001	Copy of FD MDD receipt
Ex. W47	13.01.2003	Copy of Cash Order
Ex. W48	21.01.2003	Copy of the Computer Print Out for closing of FDO A/c
Ex. W49	21.01.2003	Copy of Computer Print Out for interest certificate
Ex. W50	21.01.2003	Copy of Interest Certificate
Ex. W51	21.01.2003	Copy of Credit for Cash Orders
Ex. W52	21.01.2003	Copy of Cash Orders
Ex. W53	21.01.2003	Copy of Transfer Credit
Ex. W54	07.03.2001	Copy of Long Book
Ex. W55	—	Ledger Sheet
Ex. W56	—	Ledger Sheet
Ex. W57	17.12.2002	Ledger Sheet
Ex. W58	22.04.2003	Suspension Order
Ex. W59	23.09.2003	Charge Memo
Ex. W60	19.11.2003	Reply to Charge Memo

Ex. W61	04.11.2004	Charge Sheet
Ex. W62	19.11.2004	Reply to Charge Sheet
Ex. W63	24.11.2004	Enquiry Notice
Ex. W64	20.12.2004	Enquiry Notice
Ex. W65	06.01.2005	Enquiry Proceeding
Ex. W66	—	Presenting Officer's report
Ex. W67	10.12.2005	Reply to Presenting Officer's report
Ex. W68	13.01.2006	Enquiry Report
Ex. W69	07.02.2006	Reply to Enquiry Report
Ex. W70	18.03.2006	Second Show Cause Notice
Ex. W71	30.06.2006	Order of the Appellate Authority
Ex. W72	31.03.2006	Dismissal Order
eX. W73	09.05.2006	Letter to Appellate Order

On the Management's Side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 6 मार्च, 2013

का. आ० 801.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, 2 मुंबई के पंचाट (संदर्भ संख्या सीजी०आईटी-२/१३/२००५) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/03/2013 को प्रत द्या था।

[संग्रह-12011/118/2004-आईआर(बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 6th March, 2013

S.O. 801.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT-2/13 of 2005) of the Central Government Industrial Tribunal/Labour Court-2, MUMBAI now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of DENA BANK, and their workman, which was received by the Central Government on 05.03.2013.

[No.L-12011/118/2004-IR(B-II)]
SHEESH RAM, Section Officer**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL
NO.2, MUMBAI**

PRESENT
K.B. KATAKE
Presiding Officer

REFERENCE NO. CGIT-2/13 of 2005

EMPLOYERS IN RELATION TO THE
MANAGEMENT OF DENA BANK

The Assistant General Manager (P)
Dena Bank
Maker Towers 'E' Wing
Cuffe Parade
Mumbai 400 005.

AND

THEIR WORKMAN.

The General Secretary
Dena Bank Employees Union
17, Horniman Circle
Fort,
Mumbai 400023

Appearances:

For the Employer : Ms. Nandini Menon,
Advocate

For the Workman : Mr. M.B. Anchan,
Advocate.

Mumbai dated the 23rd January, 2013.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-12011/118/2004-IR (B-II), dated 09.11.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Dena Bank in terminating/discontinuing the services of (1) Shri Nitin H. Solanki and (2) Shri Chalapati R. Silveri w.e.f. 10.05.2003 and 6.4.2003 respectively is legal and proper and justified? If not, what relief including permanency/regularization and payment of wages in terms of Bi-partite Settlement, these two workmen are entitled to and from which date and what other directions are necessary?"

(2) After receipt of the order of reference from Ministry, notices were served on both the parties. In response to the notice, second party Union filed their statement of claim at Ex-4. First party management filed their Written statement at Ex-12. Issues were framed at Ex-20. The matter was fixed for cross examination of workman witness. Meanwhile Advocate for the second party union filed application dated 23/01/2013 (Ex-38) stating that the union does not want to press the reference as workmen are not interested in pursuing the matter further and therefore requested to dispose of the reference. Thus the order:

ORDER

Reference is dismissed as withdrawn.

No order as to cost.

Date: 23rd January, 2013

K.B. KATAKE, Presiding Officer

नई दिल्ली 6 मार्च, 2013

कानून 802.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेक्टरल बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चन्डीगढ़ के पंचाट (संदर्भ संख्या आईडी- 1310/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.03.2013 को प्रत द्दुआ था।

[सं. एल-12012/105/2006-आई आर (बी-II)]

शीश राम, अनुभाग, अधिकारी

New Delhi, the 6th March, 2013

S.O. 802.— In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. ID No. 1310/2007) of the Central Government Industrial Tribunal/Labour Court-I Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India, and their workman, which was received by the Central Government on 05.03.2013

[No. L-12012/105/2006-IR(B-II)
SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI S.P. SINGH, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 1310/2007

V.K. Gulati C/O General Secretary, Central Bank of India Employees' Union, (Pb.) 146, Golden Avenue, Phase-I, Jalandhar (Punjab).

Workman

Versus

The Zonal Manager, Central Bank of India, Zonal Office, Chandigarh Zone, Sector-17-B, Chandigarh

Management

Appearances:

For the workman : Shri Amit Mehta

For the management : Shri N.K. Zakhmi

AWARD

Passed on 20.02.2013

Central Govt. *vide* letter No. L-12012/105/2006-IR(BII) dated 7.6.2007 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Central Bank of India, Jalandhar in not including the name of workman Shri V.K. Gulati in pension optees is unjustified and illegal? If so to what relief the workman is entitled to and from which date?"

2. The workman in claim statement pleaded that the management of Central Bank of India formulated the pension scheme for the employees and circulated the same *vide* circular letter dated 12.10.1995 for seeking the option from the employees. In response to the above circular the workman opted for pension. Subsequently management of Central Bank of India on 2.1.1996 issued a fresh circular whereby one more opportunity was given to the employees to reconsider their option. Workman filed his option and the management acknowledged the same *vide* its letter dated 5.1.1996. It was further stated in the scheme that with the joining of the pension scheme the balance and the Bank contribution would be transferred to pension fund. The management transferred the balance of Provident Fund of the workman in the pension fund. Later on, it came to the notice of the workman that management illegally changed his option and it was informed to the workman that benefit of pension has not been allowed to him. Aggrieved with this, workman gave a legal notice to the management in reply to which it was stated by the management that acceptance letter dated 5.1.96 was issued due to the technical error of the computer. The action of the management is arbitrary, discriminatory and against the principle of natural justice. The excuse of technical error is not maintainable. The workman retired on 30.9.2006 from the service of the bank and he is entitled for the inclusion of his name in the list of pension optee. It is requested that management may be directed to consider the name of the workman in the name of pension optee.

3. Management filed the written statement in which preliminary objection has been taken that the workman opted for PF Scheme but the name of the petitioner was included in the letter dated 5.12.1994 and due to technical error in the computer he was shown as pension optee. Later on when the bank found this mistake, it corrected the same, therefore, the workman is not entitled. In reply on merit, it is pleaded by the management that letter dated 5.1.1996 was wrongly issued to the petitioner as the petitioner has not opted for pension. It is further pleaded that circular letter dated 29.12.1995/2.1.1996 was issued to provide one more chance to opt/withdraw for pension/Provident Fund Scheme and the workman has not given any option for withdrawal of provident fund. It is again

stated that due to technical error in the computer, the letter dated 5.1.1996 was issued wrongly and when this mistake came to the notice of management, the same was corrected. Therefore, the workman is not entitled for pensionary benefits as he has already opted for provident fund.

4. Workman in evidence filed his affidavit in which he has taken the same facts as enumerated in claim statement. The management also in evidence filed affidavit of one Anil Kumar Gupta Manager HRD.

5. Both the parties relied on documents only and argued the case on the basis of documents only.

6. Learned counsel for the workman during arguments specifically admitted that the workman is getting pension from the bank in view of the scheme formulated from November, 2009 as the management came up with scheme that the employee who will deposit 156% of provident fund with the bank he will get pension from 27th November, 2009. The workman opted the pension scheme and deposit the 156% share of provident fund and he is getting pension with effect from 27th November, 2009 onward as is revealed from the letter dated 10.10.2012 of the Branch Manager Mandi Gobindgarh taken on record on 13.02.2013. Thus, the workman is getting pension with effect from November, 2009. Now the issue remains only for the pension with effect from 01.10.2006 as the workman retired from service on 30.09.2006. It is pleaded by the learned counsel for the workman that the management acknowledged the option of pension by the workman *vide* letter dated 05.01.1996 in response to the circular dated 02.01.1996 and the workman is entitled to get his option revised as provided in the circular available on record in which is as under:

OPTION

- (1) Those who have already exercised option for pension and wish to continue to the members of the pension scheme need not exercise fresh option.
- (2) Those who have not exercised option for pension and now wish to become members of the pension scheme may exercise option within the period stipulated in Regulation 3.
- (3) Those who have exercised option for pension on or before 30.11.1994 and now wish to withdraw the option exercised for reasons may be permitted to withdraw the same. However, option exercised after 29.9.95 in terms of Regulation 3 of bank (Employees) Pension Regulations, 1995 shall be final and cannot be revoked.
- (4) All employees, who retired from the services of the Bank on or after 1.1.1986 but before the "Notified Date" and eligible for pension in terms of pension regulations and the families of such retired employees, who are since deceased, may

be permitted the facility of "netting" as advised in our circular letter No. FD/CIR/76/G(ii) /1846 dated 18.2.1995.

7. Therefore as the management also acknowledged the option *vide* letter dated 05.01.1996, the workman is entitled for pension with effect from 01.10.2006 and the plea of the management regarding computer error is not tenable. It is prayed that the management may be directed to release the pension of the workman with effect from 01.10.2006.

8. The learned counsel for the management submitted during argument that due to technical error in the computer, the letter was issued and when the mistake came to the notice of the bank, the same was rectified and the workman never opted for pension and he was provident fund optee. Therefore the workman is not entitled to the pension with effect from 01.10.2006. The workman had opted for a pension in reply to the scheme which came with effect from 27.11.2009 and he is getting pension regularly. Therefore, the workman is not entitled for pension *w.e.f.* 1.10.2006.

9. I have heard the learned counsel for the parties at length and also gone through the documents relied upon by the parties carefully.

10. Management submitted the written statement and the affidavit of Shri Anil Kumar Gupta Manager, Central Bank of India wherein it is clearly mentioned that the name of the workman finds place in M1 list of staff that have opted provident fund. From the persual of the document Ex. M1 workman V.K. Gulati name finds place at serial No. 15. Thereafter the management document Ex. M2 workman's name find place at serial No. 14. In Ex. M1 and M2 workman had opted provident fund scheme. In the document Ex. M2 workman has signed at serial No. 14 in the list of provident fund optee. Ex. M1 letter of the bank is dated 5.12.1994. On the strength of these documents, the management submitted that the workman opted provident fund scheme and not opted the pension scheme.

11. Workman submitted that in annexure W1 circular of Central Bank of India dated 29.12.1995/2.1.1996, it has been formulated a scheme for option. In para 3, of this circular is mentioned as below:

"Those who have exercised option for pension on or before 30.11.1994 and now wish to withdraw the option exercised for reasons may be permitted to withdraw the same. However, option exercised after 29.9.95 in terms of Regulation 3 of bank (Employees) Pension Regulations, 1995 shall be final and cannot be revoked."

12. In view of this provision the workman was permitted to revise his option. Besides this document, annexure W2, a memo from Central Bank of India, Pension Department, Central Office Bombay, which has been

addressed to the workman confirm the option of the workman for the pension fund and the option of the workman for pension has been accepted by the management. Management's plea is that due to computer mistake, this letter was sent to the workman. This plea of the management is not tenable because *vide* bank's circular dated 29.12.1995/2.1.1996, workman was permitted to change the option. In 2003-II-LLI page 129 Allahabad Bank and others Vs. Surender Kumar Mishra, it has been held by the Madhya Pradesh High Court that a Bank employee cannot be made to lose pension benefits for bank's inability to trace option from. In the case in hand, workman file a memo dated 10.10.2012 signed by senior manager Branch Mandi Gobindgarh for Central Bank of India. In this memo it is certified that the workman is getting the pension from 27.11.2009.

13. The workman retired from the service of the bank on 30.9.2006. The intervening period is from 1.10.2006 to 26.11.2009. For this period the workman is entitled to pension. After making adjustment/deduction as per pension scheme of circular letter prevailing at that time, the workman is thus entitled for pension.

14. In view of the above discussion, it is held that action of the management of Central Bank of India, Jalandhar in not including the name of the workman Shri V.K. Gulati in pension optees is unjustified and illegal. The workman is entitled to pension *w.e.f.* 1.10.2006. The management is directed to release the pension *w.e.f.* 1.10.2006 to 26.11.2009 as per pension scheme prevailing at the relevant time. The reference is answered accordingly Central Govt. be informed.

Chandigarh.

20.02.2012

S.P.Singh,

Presiding Officer

नई दिल्ली, 7 मार्च, 2013

कानून 803.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रसार भारती कारपोरेशन ऑफ इण्डिया, आकाशवाणी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अन्वाद नं 1 के पंचाट (संदर्भ संखा 46/2008/149) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/03/2013 को प्राप्त हुआ था।

[सं. एल-42012/58/2008-आई आर (डी यू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 7th March, 2013

S.O. 803.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (**Ref. No. 46/2008/149**) of the Central Government Industrial

Tribunal Dhanbad No. 1 as shown in the Annexure. In the Industrial dispute between the employers in relation to the Prasar Bharti Corporation of India, Akashwani and their workman, which was received by the Central Government on 04-03-2013.

[No. L-42012/58/2008-IR (DU)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1), DHANBAD

In the matter of a reference under section 10 (1) (d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 46 of 2008

Parties:—Employers in relation to the management of Prasar Bharti Corporation of India, Akashwani,

And

Their workman

Present:— Shri Ranjan Kumar Saran
Presiding Officer

Appearances:—

For the Management : None

For the Union/workman : None

State:- Jharkhand Industry :- Information & Broadcasting

Dated: 12-02-2013

AWARD

By order No. L-42012/58/2008 -IR (DU.) dated 06-10-2008 the Central Government in the Ministry of Labour has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:—

SCHEDULE

"Whether the action of the management of Prasar Bharti Corporation of India, Akashwani in terminating the service of their workman Shri Sanjay Kumar and Shri Basuki Prasad Sharma without complying Section 25 (F) of the I.D. Act and not regularizing them in service in the post of Announcer cum compure is legal and justified?" To what relief the concerned workman are entitled to?"

After having received the Order No. L-42012/581/2008-IR (DU) dt. 06-10-2008, the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute as reference case No. 46 of 2008 was registered on 02-10-2008 but till 17.1.2013 no Written Statement and document was filed on behalf of the

Union/workman. Ultimately two notices were issued to the sponsoring Union for filling of Written Statement & document by speed post/Registered post but till 17.1.2013 no one appears nor any steps have been taken by them.

In view of such circumstance it seems that the workman or the Union is not interested to contest their case further. And as such, it is ordered:—

ORDER

That let a "NO DISPUTE" AWARD be passed. Send the copies of the Award to the Govt. of India, Ministry of Labour & Employment, New Delhi for information and needful. Reference is accordingly disposed off.

Sd/

R.K. SARAN, Presiding Officer

नई दिल्ली, 7 मार्च, 2013

का अ 804.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार डिये सुपरिस्टेंडेंट हार्डीकल्चर, आगरा के प्रबंधतंत्र के संबद्ध नियेजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 88/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.03.2013 को प्रत हुआ था।

[सं एल-42012/225/1998-आई आर (डी यू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 7th March, 2013

S.O. 804.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 88/99) of the Central Government Industrial Tribunal cum Labour Court Kanpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the Deputy Superintendent Horticulturist, Agra and their workman, which was received by the Central Government on 01.03.2013.

[No. L-42012/225/1998-IR (DU)]
JOHAN TOPNO, Under Sec.

ANNEXURE
BEFORE THE PRESIDING OFFICER,
SRI RAM PARKASH, HJS,
PRESIDING OFFICER CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
KANPUR.

Industrial Dispute No. 83 of 99

Between:—

Sri Mahendra Singh,

Son of Sri Amar Singh,

Resident of house No. 13/201 Patkola,
Tajganj, Agra.

And

Deputy Superintending Horticulturist,
Archaeological Survey of India,
Eastern Gate, Tajganj,
Agra.

AWARD

1. Central Government, MoI, New Delhi, *vide* notification No. L-42012/225/98/IR(DU) dated 16/20.04.99 has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the Deputy Superintending Horticulturist, Archaeological Survey of India, Agra in terminating the services of Sri Mahendra Singh is legal and justified? If not, to what relief the workman is entitled?

3. Brief fact of the case are—

4. The claimant was engaged by the opposite party at the post of Mali on 01.12.80. He was also utilized to work in weekly holidays. He was engaged like a daily wager like others by the opposite party and by virtue of rendering continuous services of more than 240 days in the year 1982 he attained the right and status of becoming a permanent and regular employees of the opposite party. It is also alleged by the complainant that he had worked at different places under the opposite party but he was removed from his services by the opposite party with effect from 31.01.96. It is also alleged that in the name of some contract dated 01.02.96, 20 other workers were engaged as a casual Mali, who were juniors to the applicant. In this way the opposite party has breached the provisions of section 25 G and 25 H of the Act.

5. It is also pleaded by the workman that after termination of his services he served several registered notices upon the opposite party but all in vain. After disengagement of his services he is unemployed. Many juniors were inducted in the service of the opposite party like Vishnu, Sri Poup Singh etc., and they were also removed from their services soon after the notice of the workman was received by the opposite party. It is also stated that after the workman the opposite party employed S/Sri Anil son of Sri Ganga Ram etc., who are still in the employment of the opposite party. Lastly it is stated that the removal of the services of the workman is in violation of the provisions of section 25 F of the Industrial Disputes Act, 1947, thereby is entitled to be reinstated in the services of the opposite party with full back wages and all consequential benefits.

6. Opposite party has filed an exhaustive reply against the claim petition of the workmen refuting the allegations. It is stated by the opposite party that this tribunal has no authority to pass any award on the basis of

reference order. Claim filed by the claimant is highly belated and is not maintainable. No date of termination has been mentioned in the reference order, hence also on this ground the reference order is without jurisdiction. Claimant is not a workman within the provisions of section 2(s) of the Act, Likewise there are various other grounds which I need not think to discuss the same because as there is no date of termination mentioned in the reference order. Therefore going to deal other facts of the case would amount to futile exercise on the part of this tribunal.

7. It is pertinent to mention here that no documentary evidence has been filed by the workman regarding continuous working with the opposite party. Though the opposite party has admitted the working but no evidence for continuous working of the workman has been led in the case.

8. In view of above position it is a case of no evidence and under these circumstances it is quite impossible for the tribunal to grant any relief in favour of the workman for want of evidence ad proof.

9. Accordingly it is held that the workman is not entitled for any relief for want of evidence and proof. Therefore, the reference is bound to be decided against the workman and in favour of the opposite party.

10. Reference is answered accordingly against the workman and in favour of the opposite party.

RAM PARKASH,
Presiding Offices

नई दिल्ली, 7 मार्च 2013

कांग्रेस 805.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार मै केन्द्रीय सरकार डिस्ट्रिक्ट मैनेजर, टेलीकाम, हमीरपुर (हिमाचल प्रदेश) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण नं 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 544/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 01-03-2013 को प्राप्त हुआ था।

(सं. एल- 40012/64/2000-आई आर (डी यू)
जोहन तोपनो, अवर सचिव

New Delhi, the 7th March, 2013

S.O. 805.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 544/2005) of the Central Government Industrial Tribunal cum Labour Court No. II Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the Distt. Manager, Telecom, Hamirpur (HP) and their workman, which was received by the Central Government on 01.03.2013

[No. L-40012/64/2000-IR(DU)
JOHAN TOPNO Under Secy.)

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, HANDIGARH,

Present: Sri A.K. Rastogi, Presiding Officer.

Case No. I.D. No. 544/2005

Registered on 22.8.2005

Sh. Pawan Kumar, S/o Pandit Jaga Nath C/o Ramesh Chopra, 1727, Chandigarh.

Petitioner

Versus

1. The Distt. Manager, Telecom Hamirpur.
2. The Sub-Divisional Officer, Telecom.

Respondents

Appearances

For the workman Sh. Om Pal Sharma Advocate.
 For the Management Sh. K.K. Thakur Advocate.

AWARD

Passed on 1st February, 2013

Central Government *vide* Notification No. L-40012/64/2000/IR (DU) dated 31.5.2000, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to the Tribunal:—

"Whether the action of the management of Telecom Distt. Manager, Hamirpur and Sub-Divisional Officer, Telecom, Una in terminating the services of Sh. Pawan Kumar S/o Pandit Jagan Nath *w.e.f.* 8.4.1999 is legal and justified? If not, to what relief the workman is entitled?"

As per claim statement workman had been engaged on 10.8.1996 as Helper/daily rated mazdoor with the Sub-Divisional Officer, Telecommunication Department, Una. He had worked for more than 240 days in 1996, 1997 and 1998 and also for 240 days in the preceding year from 20.4.1999 when his service was terminated retrospectively *w.e.f.* 8.4.1999. He has alleged the violation of provisions of Section 25F, 25G, 25H and 25N of the Act and has alleged his termination with retrospective effect from 8.4.1999 as illegal. He has claimed his reinstatement with continuity in service and back wages and also has requested for grant of the status of PSM.

The management has contested the claim. The engagement of the work as alleged by him was admitted and it was further contended that in the year 1998 the workman has only worked for 223 days and had not

completed 240 days in the year 1998 which was a precondition laid down in CGMT HP Circle, Shimla Letter No. Staff/1034/70 dated 8.4.1999 for giving temporary status to DRMS and accordingly the service of the workman was terminated *vide* letter No. DRM/KW/7 dated 8.4.1999. According to the management during the period from 1.1.1999 to 8.4.1999 the workman worked only for 34 days. The violation of provisions of the Act was denied by the management and it was contended that the department is not an industry and the claimant is not a workman. According to the management the claim is liable to the dismissed.

In support of his case workman examined himself and filed photocopies of attendance-sheet from January 1997 to February 1999 which were collectively marked as "A". On behalf of the management Subhash Sahota was examined.

Workman on 2.5.2012 and management on 22.1.2013 filed their respective written arguments.

I have gone through the written arguments filed by the parties and also the evidence on record. So far as the demand of the workman for grant of temporary status is concerned, that is beyond the scope of the reference. Reference is about the termination of the service only.

It is now well-settled that Telecom Department is an industry. In General Manager Telecom vs. Srinivas Rao and others 1998 1 LLJ 255 the Apex Court held that the Telecom Department is engaged in commercial activity and not discharging its sovereign functions hence, it is an industry. The argument of the learned counsel for the management that the department is not an industry is not acceptable.

Similarly it cannot be accepted that the claimant is not a workman. The engagement of the claimant is admitted to the management.

The workman has alleged the violation of Section 25F and 25N of the Act but both the provisions cannot be made applicable. Section 25N is applicable to those industrial establishments which are covered under Chapter VB. There is nothing in the claim statement to make applicable Chapter VB in the present case.

The argument of the learned counsel for the workman cannot be disputed that the termination of the service of the workman amounts to retrenchment but the question is whether the workman is entitled to the protection of Section 25F of the Act. For the protection of Section 25F of the Act it is necessary that the workman should have completed at least 240 days service during 12 calendar months preceding the date of his termination. As per reference order his services were terminated on 8.4.1999. In claim statement it has been alleged that the services were terminated on 22.4.1999 with retrospective effect from 8.4.1999. But there

is nothing on record to support the allegation of the workman that his services were terminated on 22.4.1999. Therefore for the protection of Section 25F of the Act the period from 9.4.1998 to 8.4.1999 becomes material.

The workman has filed attendance-sheet from January 1997 to February 1999. Management witness has admitted these sheets to be correct. These sheets show that the workman did not work in January and February 1999. The working days from 9.4.1998 to 31st December, 1998 comes to 173 days as per this statement. Management witness in his affidavit has stated that during the period from 1.1.1999 to 8.4.1999 the workman worked only for 34 days. This statement of the management witness was not challenged during cross-examination. Hence, it must be accepted. Thus it comes that the workman during 12 calendar months preceding the date of his termination worked only for $173+34 = 207$ days. Obviously he is not entitled to the protection of Section 25F.

There is no evidence to show that at the time of terminating the services of the workman juniors of his category had been retained by the management.

Similarly there is no evidence that any DRM *i.e.* any workman of claimant's category was taken in employment by the management subsequent to the retrenchment of the claimant. Hence, violation of Section 25H also is not established.

From the above going discussion it is thus clear that the workman is not entitled to the protection of Section 25F of the Act and the termination of his service does not suffer from any illegality and is therefore legal and justified. Reference is accordingly answered against the workman.

A.K. RASTOGI, Presiding Officer

नई दिल्ली, 7 मार्च, 2013

काअ 806 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए 872) ऑफ2004 को प्रकाशित करती है जो केन्द्रीय सरकार को 06032013 को प्रत हुआ था।

[सं एल-12012/91/98-आई आर (बी-II)
शीश राम, अनुभाग अधिकारी

New Delhi, the 7th March, 2013

S.O. 806 In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award [Ref. No. CGITA/872 of /2004)] of the Central Government Industrial tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

Server3/E/1249RR/1249RR

management of Central Bank Of India and their workman, which was received by the Central Government on 06.03.2013.

[No. L-12012/91/98-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, C.G.I.T.-CUM- LABOUR COURT, AHMEDABAD

Present - Binay Kumar Sinha
Presiding Officer
Dated - Ahmedabad-30th January, 2013

Reference (CGITA) No. 872 of 2004

Reference (ITC) No.: 01 of 1999 (old)

Branch Manager,
Central Bank of India,
Main Bazar, Botad
Bhavnagar - 364001First Party

And

Their workman, Shri Deepak Kumar M Desai C/o Shri Manibhai G. Gandhi,

113, City Centre Complex.

Kalanala, Bhavnagar, 364001.... **Second Party**

For the first Party : Shri Jatinbhai R. Oza, Advocate for the
Second Party : Shri Manibhai G. Gandhi Advocate

AWARD

The Appropriate Government/Government of India/ Ministry of Labour New Delhi, Considering that an industrial dispute exists between the employers in relation to the management of Central Bank of India and their workman, by its order No. 21L012/91/98/IR (B-II) dated 05/02/1999, referred the dispute for adjudication to Industrial Tribunal, Bhavnagar under the Schedule.

SCHEDULE

"Whether the action of the management of Central Bank of India in terminating the services of Shri Deepak Kumar M. Desai *w.e.f.* 22.7.95 is legal and justified ? If not, to what relief the laid workmen is entitled?"

2. Both the management of Central Bank of India (First Party) and the workmen (the 2nd Party) appeared in response to Notice and filed respective pleadings and documents.

3. The Case of workman (2nd Party) as per statement of claim (Ecl.-3) is that he was working as peon from January 1992 to August, 1993 in Botad branch of Central Bank of India in continuous way. In the year 1995 he performed works in instalments for 43 days. Then he was terminated

by oral order dated 22.7.1995 without giving retrenchment notice or notice pay under the provision of section 25F of I.D. Act, 1947. That has caused immence loss and injury to him. He made prayer to the management of the 1st party by letters dated 7.2.96, 7.12.96 and 21.2.97 but head was paid by the employer (1st party) for taking him in job. The first Party thereafter engaged for work, of peon to the person junior to him, but he was, not called for work. The first Party as such. Violated the provision of section 25 G & H of I.D. Act and that amounts to unfair labour practice on part of the 1st Party. Futher case is that he was performing work of peon against the vacaney in the Botad branch of the Bank but he was illegally re-moved/terminated and the works to which he was performing remained continue and in his place other person was engaged as regular sub-staff and as such his regular appointment was ignored. On these grounds prayer is made for his reinstatement with all consequential benefits with continuity in service and also for any other relief to which he is found entitled and also for declaring his removal order illegal and proper.

4. On the otherhand, the case of the 1st party as per written statement *vide exit*-is that the reference is not maintainable and the claim of the workman for his reinstatement is illegal and devoid of merit and the reference is fit to be dismissed. It is the case of the 1st party that the workman was employed as casual and temporary worker as substaff at Botad branch and he was performing the works of casual nature arising in the branch and the Bank was paying him on daily wages basis. He was never given any appointment letter. His name was not entered on the muster Roll of employee kept the branch since he was not regular employee. Bank has well defined policy for recruiting the sub-staff for filling up vacancy in permanent post by calling for the names of eligible candidates from the employment exchange office and then written test and oral interview is held to find out their suitability. But concerned workman had not undergone the said selection process. Concerned workman (2nd party) served as temporary and casual worker in the branch for some period intermittently in the span of three and half years. He worked only for 270 days from 2.1.92 to 22.7.95 and during this period he did not work for 240 days in any callender year. So no violation of section 25F, 25G or 25H has been caused. As per chart of works, the 2nd party worker had worked for 141 days in the year 1992, 103 days in 1993, Nil work in 1994 and 26 days in 1995 and Nil work in 1996—total 270 days. His services was utilised as per requirement in the Botad branch. Finally Bank got the regular candidate recruited/appointed and these after the concerned worker (2nd party) was not given any further engagement. The Bank has not violated the provision of I.O. Act and so the action of the Bank is 1st and proper The 2nd party is not a workman as his casual services were utilised for certain period as and when required as a time gaps arrangement. The first party has denied para 1 of the S/C that 2nd party worked continuously

during the period Jaunary, 1992 to August, 1993 and that he worked only for 26 days against his claim of work for 43 days in 1995. The first party has also denied para 2 to para 9 of the statement of claim. On these grounds prayer is made to reject the reference with cost.

5. In view of the pleadings of the parties the following issues are taken up for determination in this case:—

—: ISSUES :—

- (i) Is the reference maintainable?
- (ii) Has the 2nd party got valid cause of action to raise dispute?
- (iii) Whether the 2nd party Deepak Kumar Desai has cooperated 240 days of works in callander year preceding his alleged termination 22.7.95?
- (iv) Whether 2nd party is entitled for his reinstatement with continuity of service and consequential benefits as alleged? If not whether he is entitled to get any lumpsum compensation from the 1st party?
- (v) Whether the action of the management of Central Bank of India in terminating the services of Shri Deepak Kumar M. Desai is legal and justified?
- (vi) What orders are to be passed?

FINDINGS

6. **Issue No. III:**—2nd party Deepak submitted his affidavit in lieu of examination-in-chief (Ext. 32) and was sub-examined by the lawyer of 1st party. First party has not adduced oral evidence, but has adduced documentary evidence marked ext. 23 to 23/24 which are verified zerox copies of vouchers through which 2nd party was paid daily wages for the days of works during period of his works as daily rated worker in the Boted branch of Bank. 2nd party has also adduced documentary evidence marked ext. 24 to 34.

7. Admitted facts in this case are as follows Deepak had been engaged at Boted branch of Bank as daily rated worker. His father was working as regular Sub-Staff in Boted branch. Deepak (Second Party) was not given appointment letter by the Bank authority. No. I.D. Card was issued to him as that of regular/permanent employee of Bank. He was not making Signature regarding attendance as that of regular employee in the muster Roll. Wage slip was not issued to him. He was engaged as casual/temporary worker 2.1.92 to 22.7.95.

8. First party has produced 25 vouchers under a list ext.-13 and its production was allowed by the court on 6.3.03 and those vouchers were marked pucca exhibits-23 to 23/24. Ext. 23 is voucher regarding payment of wages for seven days upto 27.1.92. Ext. 23/1 is as to payment of wages for 24 days in March 1992. Ext. 23/2 is for payment from

1.4.92 to 30.4.92 on daily wages. Ext. 24/4 is for payment for 12 days from 1.8.92 to 18.8.92 except holidays. Ext. 23/5 and 23/6 are for payment of daily wages for 16 days in October, 1992. Ext. 24/7 is for payment for 12 days in November 1992. Ext. 23/8 is as to payment of wages for 5 days in December 1992. As per Ext. 23/9 is also payment of wages for 5 days in December 1992. As per Ext. 23/10 Deepak was paid daily wages for 5 days in January, 1993 Ext. 23/11 is for payment for 13 days in February, 1993. Ext. 23/12 is as to payment of wages for 14 days in March, 1993. Ext. 23/13 is as to payment for 12 days in April, 1993. Ext. 23/14 is as to wages for 14 days in May, 1993, ext. 23/15 is for 14 days in June, 93, ext. 23/16 is for 15 days in July, 93, ext. 23/17 is for 2 days in August, 93 around Rs. 374/- Thereafter Deepak (2nd Party) was paid wages for 26 days in 1995 as per ext. 23/18 to 23/24. From calculating the days of works year-wise, it is evident that Deepak (2nd party) worked for 141 days in 1992, 103 days in 1993, Nil days in 1994 and 26 days in 1995. That go to prove that in any calender year (twelve months) he never worked for 240 days. More so in the year of alleged termination in 1995 as on 22.7.95 preceding termination he did not complete 240 days of work as his work in 1994 is nil.

9. Now coming to documents proceeded by the 2nd party, Ext. 24 is letter of Central Bank of India. Boted branch dated 22.9.95 that addressed to the personnal Deptt. Regional Office, Rajkot regarding engagement of casual karamchari at Boted branch. That goes to show that Deepak worked for 161 days in 1992, 103 days in 1993 and 43 days in 1995. This also go to connect 1st Party's documents ext. 23 to 23/24 that Deepak did not complete 240 days of work in any callender year and he did not work in 1994. Ext. 25 in application of Deepak regarding vacancy of sub-staff in Bhavnagar District branch. Ext. 26 is letter of Branch Manager Boted informing to regional office that Deepak worked beyond 60 days in each year 1992 and 1993 as temporary peon (Partly wages basis) Ext. 27 go to show that Branch Manager, Boted intimated to Regional office that Deepak is son of Shri M.P. Desai also is regular Peon working at Branch for the last 15 years. Ext. 28 is certificate of Branch Manager, Boted that Deepak M. Desai worked in the Branch as Peon only daily wages for a period of two months during 1992-93. Ext. 29 is copy of application of Deepak dated 7.2.1996 to A.G.M. personnel department Central Bank of India, Zonal Office, Laldarwaja, Ahmedabad, Ext 30 is application of Deepak dated 7.12.96 addressed to A.G.M. Zonal Office, Ahmedabad. Ext. 31 is copy of pleader's notice to A.G.M., Zonal Office, Ahmedabad and Branch Manager, Boted dated 21.2.97. Ext. 32 is letter of Branch Manager, Boted dated 15.4.96 on the request application of Deepak for Permanent appointment as Sub-staff in the Bank, sent to personnel Department, Regional Office, Rajkot. From perusal of above documents it does not go to prove the status of Deepak M. Desai as regular sub-staff engaged against any vacant Post, rather go to show status of Deepak as casual worker.

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10. Ext. 33 is Central office circular of Central Bank of India dated 20.9.1993 received in Botad Branch on 11.10.1993 on the subject of absorption of temporary employees who have worked for 90 days or more from 1.1.1982 to 24.12.1990 as per para (3.1), temporary employees who have worked for 90 days or more from 1.1.82 to 31.12.86 as per para (3.2) and 80 days 1.1.87 to 24.12.90. That clearly go to show that last cut off date is 24.12.90 as to eligibility of temporary employees to be absorbed considering employees period of work either 90 days or 60 days as per stipulated period under cl. (3.1) and (3.2). This circular in no way proved helpful to the 2nd party Deepak M. Desai, because he was engaged much after cut off date 24.12.1990, i.e. he was engaged on 2.1.1992. Likewise ext. 34 which is minutes of joint discussions held between Management of Central Bank of India and All India Central Bank's Employees Congress dated 17.4.1997. This do not also proved to be helpful to the 2nd party (Deepak).

11. At Ext. 41 (list of document) the 2nd party further produced four documents (1) complaint made by Deepak before A.L.C. (central) (2) reply made by Bank (present 1st party) before A.L.C. (central) in conciliation proceeding. These documents do not carry importance for adjudication of the dispute in this case. These conciliation documents do not go to prove the case of 2nd party.

12. 2nd party (Deepak) in his evidence (Ext. 32) could not be able to improve his case that he was appointed on vacant post of peon at Botad Branch. Rather his evidence go to prove that he was working temporarily as casual worker as daily roted Sub-staff and had not completed 90 days or 60 days before cut off date on 24.12.90 as per Ext. 33. On the other hand Ext. 23 series which are vouchers also go to show that on several occasions when his father who was a regular peon (sub-staff) at Botad Branch remained on leave. Deepak was engaged for that certain period not more than a week as daily roted worker and was paid through vouchers for that period.

13. Learned Advocate Shri Manibhai G. Gandhi for the 2nd party has relied upon the following case lawys—

- (i) 2009 (4) LLN 509 Bombay
- (ii) 2010 (2) LLN 14 S.C.
- (iii) 2011 (3) LLN 597 (D.B.) Gujarat H.C.
- (iv) 2008 (5) LLN 167 Gujarat H.C.
- (v) 2002 (3) LLN 10 SC
- (vi) 2010 (4) LLN 812 Gujarat H.C.
- (vii) 2009 (3) LLN 603 S.C.
- (viii) 2008 (4) LLN 612 S.C.
- (ix) 2004 (2) LLN 928 Bombay, and
- (x) 2011 (3) LLN 682 Madras.

But none of these case laws are helpful for the 2nd party, because it could not be moved that Deepak M. Desai completed 240 days of works in any callender year and particularly in the callender year preceding his oral termination on 27.7.1995 more so, Act 33 is also not helpful to the second party.

14. As per discussion made above, I am of the considered view that the 2nd party has not worked for 240 days in any callender year rather he worked in the year 1992, 1993 and 1995 in split up way and not continuously. Even it is accepted that he (Deepak) worked for 307 days as against the case of the 1st party as to 270 days of work that do not go to make any difference. So, I find and hold that the 2nd party worker namely Deepak M. Desai has not completed 240 days of work in 12 months, preceding his alleged termination on 27.7.1995. This issue is therefore, decided against the 2nd party.

15. **Issue No. IV:**—As per discussions and findings in the foregoing of issue No. (iii), I further find and hold that 1st party has not violated the provision of section 25 F, 25G or 25 H of the I.D. Act 1947. The Hon'ble Supreme Court in the case law of Senior Suptd. Telegraph (Traffic), Bhopal vs. Santosh Kumar Seal & others reported in 2010(iii) CLR 17 have held that in cases of termination of workman's services being found illegal, relief of said statement with back wages is not to be automatically granted. Grant of reasonable monetary compensation would Subserve interest of justice. The Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee. In the instant case Deepak (Second Party) was working as daily wager, was not holding a post as that of permanent substaff. Since Deepak has not even completed 240 days of work in callender year, so he is not found entitle for any compensation. Since these was no violation of the provision of section 25F of the I.D. Act. The provision of either sec. 25G or 25 H are also not applicable since 2nd party failed to establish that any junior daily wager was retained whereas he was removed. Accordingly issue No. (iv) is totally decided against the 2nd party. As such 2nd party is not entitled for reinstatement nor he is entitled for any compensation.

16. **Issue No. V:**—In view of the findings given to issue No. (iii) and (iv) in the foregoing paras, I, therefore find and hold that the action of the management of Central Bank of India in terminating the services of Shri Deepak Kumar M. Desai *w.e.f.* 22.7.1995 is legal and justified. This issue is answered in affirmative in favour of the 1st party.

17. **Issue No. I, II & VI:**—As per findings arrived at in the foregoing to issue No. (iii), (iv) and (v), I further find and hold that the reference is not maintainable and the 2nd party has no valid cause of action to raise dispute.

It is, therefore.

ORDERD

This reference is dismissed on contest. No order as to any cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 7 मार्च, 2013

कानून 807.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 66/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/03/2013 को प्राप्त हुआ था।

[सं. एल-/2012/168/2003-आईआर० (बी-1)]

बी० एम० पट्टायक, डेस्क अधिकारी

New Delhi, the 7th March, 2013

S.O. 807.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 66/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner & Jaipur and their workmen, received by the Central Government on 07/03/2013

[No.-L-12012/168/2003-IR(B-I)]
B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 66/2011

The Vice President,
State Bank of Bikaner &
Jaipur Karamchari Sangh,
898, Nai Sarak,
Delhi-110006

Workman.....

Versus

The General Manager
State Bank of Bikaner & Jaipur
Head Office, Tilak Marg,
Jaipur-302006

Management.....

AWARD

Shri Dayanand Singh serving State Bank of Bikaner and Jaipur (in short the bank) as Cashier cum Godown Keeper died in harness on 09.09.1997. He was survived by his wife and three sons. In February 1998, Smt. Premlata,

widow of Shri Dayanand Singh, moved an application for appointment of her eldest son in the service of the bank on compassionate grounds. The bank wrote on 05.04.1998 informing that her eldest son is overage for recruitment. In November 1998, she requested the bank that her son Shri Amit Kumar may be offered job on compassionate grounds, on attaining age of majority. When Amit Kumar attained age of majority, Smt. Premlata wrote to the bank for his appointment on compassionate grounds. Her request was rejected by the bank projecting that her family had sufficient means of livelihood. She approached Akhil Bhartiya Bank Karamachari Sangh (in short the union) for redressal of her grievance. A demand was raised by the union, which was not conceded to. An industrial dispute was raised by the union before the Conciliation Officer. Since the bank contested the claim, conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to Central Government Industrial Tribunal No. 2, New Delhi, for adjudication vide order No. L-12012/168/2003-IR(B-I), New Delhi, dated 10.08.2005, with following terms:

‘Whether the action of the management of State Bank of Bikaner and Jaipur in not giving compassionate appointment after the death of late Shri Dayanand Singh, ex-Cashier-cum-Godown Keeper to Shri Amit Kumar, the son of the deceased employee, is just, fair and legal? If not, what relief Shri Amit Kumar is entitled to and from which date?’

2. Claim statement was filed by the union pleading therein that Shri Dayanand Singh was a permanent employee of the bank. He joined services of the bank on 05.03.1977. At the time of his death, he was serving Chandni Chowk branch of the bank. While returning home, he met with an accident on 09.09.1977, which proved fatal. He was survived by his wife, Ms. Premlata, sons Satish Kumar, Amit Kumar and Joginder Kumar respectively. Family of the deceased did not have any income since Shri Dayanand Singh was the only earning member to support it. Smt. Premlata moved an application for appointment of her eldest son, Satish Kumar, in the bank in February 1998. The bank responded, stating that Shri Satish Kumar has crossed the age of recruitment. In November 1998, she submitted a request for appointment of her son Amit Kumar on attaining age of majority. Amit Kumar was born on 01.05.1982 and below age of recruitment at that time. At the instance of the Chief Manager, she submitted a prescribed application for appointment of Shri Amit Kumar on compassionate grounds. Her request was rejected by the bank projecting that the family had sufficient means of livelihood. She submitted a representation for re-consideration, but no reply was received.

3. The union projects that vide letter dated 13.08.2001, demand for appointment of Shri Anil Kumar on

compassionate grounds was made. The bank opted not to offer any reply. Consequently, a dispute was raised before the Conciliation Officer. The union claims that originally family pension of Rs. 2164.00 was sanctioned, which was reduced to Rs. 1082.00 with effect from 09.09.2004. At the time of his death, Shri Dayanand Singh was getting Rs. 9057.00 per month as his wages. A sum of Rs. 98,839.00 was paid as gratuity, besides a sum of Rs. 52528.68 paid to Smt. Premlata towards provident fund. Money, so paid, has been spent in meeting liabilities left by late Shri Dayanand Singh.

4. The union unfolds that in past, the bank had granted compassionate appointment to heirs of deceased Shri Ushan Kumar Kapoor, Shri Arun Kumar Takian, Shri Gurbax Singh and Shri C.P. Chhawar. Scheme for appointment of dependents of deceased employees on compassionate grounds (in short the scheme) was notified by the bank in April 79, which was modified in March 1987 and further modified in March 1997. Request for appointment of Shri Amit Kumar on compassionate grounds was justified. Rejection of request by the bank was unfair and illegal. While denying compassionate appointment, the bank did not mention standards of adjudging "sufficient means" of the family. The union declares that none from the family of Shri Dayanand Singh was employed. On the other hand, discriminatory steps were taken by the bank when appointment of Shri Amit Kumar was rejected. It has been claimed that the bank may be ordered to provide appointment to Shri Anil Kumar on compassionate grounds.

5. Claim was demurred by the bank pleading that dispute raised by the union is not covered by section 2 (K) of the Industrial Disputes Act, 1947 (in short the Act). The union presents that neither dispute regarding terms of employment nor conditions of labour has been raised. In any of Award or Bipartite Settlements service conditions, laying down right to appointment on compassionate ground, have not been provided. Since dispute raised is not an industrial dispute, this Tribunal has no jurisdiction to entertain it. The bank agitates that the scheme for compassionate appointment is not an ordinary mode of recruitment. Compassionate appointment is provided to tide over immediate family crisis and for that purpose, the bank had to see financial conditions of the family of the deceased.

6. Admitting factum of Shri Dayanand Singh dying in harness, the bank details that an amount of Rs. 98,839.00 was paid as gratuity, besides a sum of Rs. 52528.68 paid towards provident fund to the family of the deceased. A sum of Rs. 20,000.00 was also paid out of Bank's Welfare Fund. Total amount paid to the family of the deceased was Rs. 243820.00 Family pension of Rs. 3428.00 per month was paid to the widow. Besides that, the family was having their own residential accommodation on a plot of 200 Sq.yds at premises No. 311/28, West Ram Nagar, Sonepat. The bank claims that the eldest son of the deceased was

gainfully employed at the time of death of his father. Considering financial conditions of the family, it was not justifiable to offer compassionate appointment to Shri Amit Kumar. Factum of moving an application for compassionate appointment in February 1998 and November 1998 are not disputed. After lapse of seven years, family pension was halved under the rules. Since the family was not in penury, compassionate appointment was not granted to Shri Amit Kumar.

7. The bank projects that family of Shri Ushan Kumar was getting family pension of Rs. 1856 per month from Defence. Pension from the bank was not opted by the widow of Shri Ushan Kumar. Family of Shri Ushan Kumar received an amount of Rs. 147206.00 towards retiral benefits. When this amount is invested at 11.25% per annum, it would yield a sum of Rs. 1173.00 per month. Thus, total income of the family of Shri Ushan Kumar would come to Rs. 3029.00 (Rs. 1856.00 + Rs. 1173.00), which was less than 50% of his last drawn salary. In the case of Arun Takiyar, total income of his family was Rs. 3220.00, which was less than 50% of his last drawn gross salary. Family of Shri Gurbax Singh received retiral benefit of Rs. 165768.00. Total monthly income of that family was Rs. 1320.00, which was also less than 50% of salary of late Shri Gurbax Singh. Case of Shri Chhawar relates to January 1996. Circular No. PER/115/96-97 was issued by the bank on 11.03.1997 in pursuance of judgment of the Apex Court. Facts of Shri Chhawar were based on distinct and different proposition. The bank asserts that families of Shri Ushan Kumar and Shri Gurbax Singh were not on same pedestal on which family of deceased Dayanand Singh stood. There was no parity in their case. Claim projected by the union is not maintainable. It may be dismissed, being devoid of merits, pleads the bank.

8. In rejoinder, facts pleaded in the claim statement are reiterated.

9. Vide order No. Z-22019/6/2007-IR (C-II), New Delhi, dated 31.03.2011, the case was transferred to this Tribunal for adjudication by the appropriate Government.

10. Shri Amit Kumar and Shri B.K. Aggarwal entered the witness box to testify facts in support of the claimant. Shri Hemant Kumar Vijayvargia detailed facts on behalf of the bank. No other witness was examined by either of the parties.

11. Arguments were heard at the bar. Shri V.K. Aggarwal, authorized representative, advanced arguments on behalf of the union. Shri Rajat Arora, authorized representative, presented facts on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows.

12. At the outset, it was argued on behalf of the bank that the dispute is not an industrial dispute. Shri Arora presents that the dispute referred for adjudication is neither a dispute relating to terms of employment nor conditions of labour. He contends that neither in Awards nor in Bipartite Settlements, no service conditions are laid down to the effect that compassionate appointment is to be given to dependents of deceased employees of the bank. He claims that the dispute, under reference, does not answer ingredients of definition of the term "industrial dispute" as enacted by section 2(K) of the Act. Submissions made by Shri Arora are dispelled by Shri Aggarwal. For an answer to the proposition raised by the bank, it is expedient to ascertain whether the dispute falls within the pale of the definition of the term industrial dispute. For sake of convenience, definition of industrial dispute, enacted in the aforesaid section, is extracted thus:

"industrial dispute menas any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

13. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with-(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

14. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act.

15. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and

economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a *bonafide* labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workman as a class.

16. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate (1958 (1) LLJ 500) and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employment, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

"We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

17. In Kyas Construction Company (Pvt.) Ltd. (1958) (2) LLJ 660) Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workmen and that the definition of the expression "industrial dispute" is wide enough to cater a dispute

raised by the employer's workmen with regard to non employment of others, who may not be employed as workmen at the relevant time. The Apex Court in Bombay Union of Journalist (1961 (II) LLJ 436) has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was an employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

18. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan (1957(1)LLJ27) the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid therein that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand (1965 (1) LLJ 668) it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited (1970 (I) LLJ 132). However in Western India Match Company (1970 (II) LLJ 256), the Apex Court referred the precedent in Dimakuchi Tea Estate's case (supra) and ruled that a dispute relating to "any person becomes a dispute where the person in

respect of whom it is raised in one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

19. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the Union of which workman may be member of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P. Somasundrameran (1970 (1) LLJ 558).

20. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works (1970 (1) LLJ 507) complaints relating to dispute of ten workmen were filed before the Consiliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

21. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute

may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited (1974 (II) LLJ 34). For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. (1970 (II) LLJ 256).

22. A Long line of decisions, handed down by the Apex Court, had established that an individual dispute could not per se be an industrial dispute, but could become one if it was taken up by a trade union or a considerable number of workmen of the establishment. This position of law created hardship for individual workmen, who were discharged, dismissed, retrenched or whose services were otherwise terminated when they could not find support by a union or any appreciable number of workman to espouse their cause. Section 2A was engrafted in the Act by the Amendment Act of 1965 and it has to be read as an extension of the definition of industrial dispute contained in clause (k) of section 2 of the Act. Thus by way of extension of definition of industrial dispute, by insertion of section 2A of the Act, the dispute of an individual workman connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his service by his employer has been brought within the ambit of the Act.

23. As conceded by the bank in its written statement, there is a scheme for compassionate appointment for dependents of deceased employees. Claim of dependents of the deceased employee for compassionate appointment in the service of the bank is to be judged in accordance with contents of the scheme. No discretion is available with the bank to dispose of such an application on whims and fancies. Even otherwise, a dispute relating to nonemployment of a dependent of a deceased employee would answer the

ambit of the definition of the term "industrial dispute, if it has been espoused by a union or considerable number of the workmen in the establishment of the management. The bank does not dispute has been espoused by the union. In view of all these facts, it does not lie in the mount of the bank to claim that the dispute referred for adjudication no where answers parameters of industrial dispute, defined by section 2 (K) of the Act. Therefore, objection raised by the bank is brushed aside.

24. Next count of attack has been made by the bank claiming that the dispute was not espoused by the union. However, on that proposition, Shri B.K. Aggarwal unfolds that the union raised a demand before the bank for appointment of Amit Kumar on compassionate grounds vide its letter dated 13.08.2001, copy of which has been proved as Ex.WW1/7. The bank made no response to Ex.WW1/7, hence union raised the industrial dispute before the Conciliation Officer. Shri Aggarwal could highlight that collective will was shown by the union, when a demand for appointment of Amit Kumar was made before the bank. Express will of appreciable number of workmen in the establishment of the bank was therein favour of appointment of Shri Amit Kumar on compassionate grounds. The bank could not dispel these fact. Thus it is apparent that the union espoused the issue relating to employment of Shri Amit Kumar on compassionate grounds. The attack made by the bank is found to be futile, on this aspect too.

25. Facts pleaded and testified by an on behalf of the parties unfold that first of all Smt. Premlata made an application for appointment of her eldest son, namely, Shri Satish Kumar. The bank informed her that Shri Satish Kumar was ineligible for appointment. On 10.11.1998, she submitted an application for appointment of her son Amit Kumar on compassionate grounds. The application was declined by the bank, since the bank was of the view that the family was having sufficient means of livelihood. It is an admitted fact that the bank was having a scheme for compassionate appointment, which has been proved as Ex.WW1/9. When contents of Ex.WW1/9 and its annexure are scanned, it emerged over the record that the scheme contains eligibility criteria, mode of appointment, qualification etc. for dependents of deceased employee for their appointment on compassionate grounds in service of the bank. It would be in the fitness of things to ascertain as to what that scheme is and to whom it is applicable.

26. Scheme of compassionate appointment, proved as Ex.WW1/9, applies to dependent family members of deceased employee. Dependent means a widow, a son, including adopted son, a daughter and husband of a female employee who is fully dependant on his wife and is incapable of maintaining himself either for the reason of accident or sickness or otherwise and brother or sister in

the case of an unmarried employee who dies in harness or any other relative nominated by the widow or the widower on whom he/she will be wholly dependent. Only such brothers or sisters who are dependent on an unmarried employee who die in harness will be eligible for being considered for appointment.

27. The bank may at its discretion appoint in its service the widow or a son or daughter of a deceased employee of the bank or a near relative nominated by the widow and on whom she will be wholly dependant and who would give in writing that he or she would look after the family of the deceased employee, if the widow or a son or daughter of a deceased employee of the bank or a near relative as the case may be, fulfils the criteria for appointment under scheme. Such nominations of a near relative by the widow shall be permitted only when the deceased employee has left behind no children of his own eligible for appointment. Appointment under the scheme shall be made in the subordinate or clerical cadre depending upon the qualification and other circumstances of the person seeking compassionate appointment.

28. Request for appointment under the scheme should be received by the bank within one year from the date of death of the employee. In case the dependant is a minor or does not possess suitable minimum qualification his/her case can be considered within four years of the death of the employee, to enable him/her to so qualify as in terms of age and/or qualification, provided that the dependant has made a request to the bank within a year of the death of the employee.

29. In case a widow, son or daughter is already in employment, whether in the bank or elsewhere, the bank may at its discretion consider giving employment to another son or daughter after taking into account the individual circumstances of each case, i.e. income of the member of the family already employed, the size of the family, the assets and liabilities of the family and other relevant considerations.

30. The Apex Court in G. Anantha Rajeshwara Rao (1994(1) SCC 192) had considered the scheme of compassionate appointments formulated by the Government of India and ruled that appointment on grounds of descent clearly violates Article 16(2) of the Constitution, but if the appointment is confined to the son or daughter or widow of the Government servant who die in harness, who need immediate appointment on the ground of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of economies from the bread winner to relieve distress of the members of the family, it is unexceptionable. Again in Umesh Kumar Nagpal (JT 1994 (3) SC 5325) the Apex Court considered

the scheme and laid down following principles in that regards:

- (1) Only dependents of an employee dying in harness, leaving his family in penury and without any source of livelihood can be appointed on compassionate grounds.
- (2) The posts in group "C" and "D" are the lowest posts in non-managerial and managerial categories and hence those posts alone can be offered on compassionate grounds.
- (3) The whole object of granting compassionate appointments is to enable the family to tide over the crisis and to relieve the family of the deceased from destitution and to help it get over the emergency.
- (4) Offering compassionate appointments as a matter of course, irrespective of financial condition of the family of the deceased or medically retired government servant, is legally impermissible.
- (5) Neither the qualification of the applicant (dependent family member) nor the post held by the deceased or medically retired government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to accept it. The post is not to be offered to cater his status but to see family through the economic calamity.
- (6) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in the future, and
- (7) Compassionate appointment cannot be offered by an individual functionary or an ad hoc basis.

31. In Asha Ram Chander Ambedker and others [JT 1994 (2) SC 183] the Apex Court ruled that the High Courts and Administrative Tribunals cannot give directions for appointment of a person on compassionate ground but can merely direct consideration of the claim for such appointment. In Dinesh Kumar (JT 1996 (5) SC 319) and Smt. A. Radhika Therumalai (JT 1996 (9) SC 197) it was announced that appointment on compassionate ground can be made only, if a vacancy is available for that purpose. In Rami Devi and others (JT 1996 (6) SC 646) it was ruled that if the scheme relating to appointment on compassionate ground is made applicable to all sort of casual, ad hoc employees, including those who are working as apprentice, then the scheme cannot be justified on constitutional grounds.

32. Now, factual matrix of the controversy is to be addressed. As admitted by the parties, Shri Dayanand Singh

expired on 09.09.1997, leaving behind his widow, Ms. Premlata and Son, namely, Satish Kumar, Shri Amit Kumar and Shri Joginder Kumar. In February 1998, Ms. Premlata moved an application for appointment of Shri Satish Kumar on compassionate grounds, which application could not be considered as he was above the maximum age, prescribed for appointment in service of the bank. Since, Shri Amit Kumar was under age at that time, Smt. Premlata moved an application on 10.11.1998 seeking his appointment on compassionate grounds. Therefore, these facts bring it over the record that initially Smt. Premlata moved an application for appointment of her eldest son on compassionate grounds. When he was found ineligible for appointment, she moved an application in November 98 for appointment of Shri Amit Kumar in the service of the bank.

33. Application for appointment on compassionate grounds is to be made within a period of one year from the date of death of an employee. Since, Smt. Premlata has moved the application for appointment of Shri Satish Kumar in February 98, it is evident that the application was moved before the bank within the prescribed time limit of one year. Subsequent application was moved by her for appointment of Shri Amit Kumar in services of the bank on compassionate grounds in November 98. Though her husband expired in September 97, her application would be considered within time since her earlier application was disposed of by the bank, projecting that Shri Satish Kumar was over-age. In the scheme, provision was there to relax upper age limit upto a maximum period of five years. Instead of relaxing upper age limit in favour of Shri Satish Kumar, the bank declined that application and made Smt. Premlata to move subsequent application seeking appointment in favour of Shri Amit Kumar, her second son. Therefore it is emerging over the record that the application for compassionate appointment of Shri Amit Kumar was moved by Smt. Premlata within the prescribed time limit.

34. In Ex. WW1/6, Smt. Premlata mentions that at the time of death of her husband, there was 14 years service left which the deceased had to render with the bank. From these facts, it is evident that at the time of death, Shri Dayanand Singh was aged about 46 years. Under the scheme Ex. WW1/9, eligibility criteria for extending benefit on compassionate grounds have been detailed. It emerged over the record that Shri Dayanand Singh died at a very young age and his widow moved application for compassionate appointment of Shri Amit Kumar. Eligibility of Shri Amit Kumar for appointment on compassionate grounds was never disputed by the bank. As pointed by Shri Hemant Kumar Vijayvargia, application for appointment on compassionate grounds was rejected since the bank was of the opinion that the family had sufficient means to sustain. These factors make it apparent that except for financial position of the family of the deceased

Shri Dayanand Singh, the bank found application for appointment of Shri Amit Kumar on compassionate grounds in order.

35. Scheme was floated by the bank and Circular No. PER/115/96-97 was issued on 11.03.1997, which has been proved as Ex.WW1/10. Ex.WW1/10 lays down criteria for determination of financial conditions of the family of a deceased employee. It has been detailed therein that compassionate appointment is to be made in favour of dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. Financial conditions of the family, therefore, is an important consideration. Criteria for determination of financial conditions and eligibility for appointment on compassionate grounds is to be decided taking following factors into consideration:

- (a) Family pension
- (b) Gratuity amount received
- (c) Employee's/employer contribution to Provident Fund
- (d) Any compensation paid by the bank or its welfare fund
- (e) Proceeds of LIC policy and other investments of the deceased employee
- (f) Income of family from other sources
- (g) Income of other family members from employment or otherwise,
- (h) Size of the family and liabilities, if any

36. Shri Hemant Kumar Vijayvarghia details in his affidavit Ex.MW1/A that family pension of Rs. 3428.00 per month was granted in favour of Ms. Premlata. Besides family pension, she had received a sum of Rs. 98,839.00 as gratuity, 53522.00 as provident fund, Rs. 72459.00 as leave encashment and a sum of Rs. 20000.00 from welfare fund. He unfolds that total amount received by the family of Shri Dayanand Singh was 243820.00. This amount was reduced to Rs. 216199.00 after deducting liability of Rs. 27621.00 from Rs. 243820.00. After allowing 15% of that amount towards contingencies, amount of Rs. 183771.00 if invested at 11.25% per annum, would yield an income of Rs. 1723.00 per month. Thus total amount available to the family was about 5151.00 (i.e. Rs. 3428+Rs. 1723), which was more than 50% of gross salary last drawn by the deceased. These factors made the bank to form an opinion that the family had sufficient means to sustain.

37. To establish facts to the effect that family of deceased Shri Dayanand Singh was having no sufficient means to sustain, Shri Amit Kumar unfolds in his affidavit Ex.WW1/A that gross salary of his father was 9057.41 at

the time of his death. He used to receive Rs. 6534.00 as his net salary in 1997. These facts were not dispelled by the bank when Shri Amit Kumar was cross examined. However, facts projected by Shri Vijayvargia, relating to amount disbursed to the family of the deceased, were also not doubted. Therefore, it is to be ascertained as to what notional income family of the deceased Shri Dayanand Singh could earn on deposits. In 1998, bank interest for yearly deposits was 11.25% for the employees or their dependents, in case of death in harness. Multiplying the amount of Rs. 183771 with rate of interest referred above, notional income would come to Rs. 1723.00 in the year 1998. Family was getting a pension of Rs. 3428.00. Thus income of the family of the deceased comes to Rs. 5151.00 per month. As detailed above, family of the deceased Shri Dayanand Singh was having income of Rs. 5151.00 per month. It was above 50% of gross salary last drawn by the deceased. Thus, it is evident that the family was having sufficient means to maintain itself. Decision taken by the bank in not offering compassionate appointment to Shri Amit Kumar, son of deceased Dayanand Singh cannot be faulted.

38. Amit Kumar questions action of the bank on the count of treating him in a discriminate manner. He projects in his affidavit Ex.WW1/A that the bank had offered appointment on compassionate grounds to Smt. Sangeeta Takiar, Smt. Manjeet Kaur, Shri Kamal Chhawar and Shri P.K. Kapoor, wives of Shri Ashok Kumar Takiar, Shri Gurbax Singh and sons of Shri C.P. Chhabra and Shri Ushan Kumar Kapoor. He presents that at the time of his death, Shri Ushan Kumar Kapoor was working as Armed Guard, whose gross salary was Rs. 6878.00 per month. He was drawing net salary of Rs. 6532.00 on 26.03.1999, the date of his death. The widow was getting a family pension of Rs. 1856.00 from Defence. A sum of Rs. 147206 was received by the family of the deceased at the time of his death. If the amount received by the family of Shri Kapoor is invested @ 11.25% it would yield Rs. 1173.00 per month as income. She was drawing a family pension of Rs. 3060.00 from the bank. Thus total income of the family of Shri Ushan Kumar comes to 6089.00 (Rs. 1856+3060+1173). According to Shri Amit Kumar, gross income of the family of Shri Ushan Kumar Kapoor would come to 88.53% of gross salary received by Shri Ushan Kumar Kapoor at the time of his death.

39. Facts unfolded by Shri Amit Kumar, relating to income of family of Shri Ushan Kumar Kapoor, are in contrast to facts deposed by Shri Vijayvargia. He presents that family of Shri Ushan Kumar Kapoor was getting a family pension of Rs. 1856.00 per month from defence. A sum of Rs. 147206.00 was received by the family of Shri Ushan Kumar Kapoor after his death. After leaving 5% of the said amount for contingencies, a sum of Rs. 125126 (Rs. 147706.00 minus 22080.00) if invested @ 11.25% would yield an income of Rs. 1173.00 per

month. Thus total notional income available to the family of Shri Ushan Kumar Kapoor would be Rs. 3029.00 (Rs. 1173.00+Rs. 1856.00), which was less than 50% of his last drawn salary. During course of cross examination, he presents that Smt. Soma Rani, widow of Shri Ushan Kumar Kapoor, was getting pension of Rs. 3185.29 from the bank, which family pension was stopped. When Ex.MW1/1 was perused, it came to light that besides gratuity and provident fund amount, a sum of Rs. 31919.16 was also received by family of Ushan Kumar Kapoor towards leave encashment. On appreciation of these facts, unfolded by Shri Vijayvargia, it came to light that total amount received by the family of Shri Ushan Kumar Kapoor from the bank comes to Rs. 147206.16. (Rs. 54539.00+60748.00+31919.16). If 15% of the amount is spread for contingency, a sum of Rs. 125125.10 comes in hands of the family, which is available for investment.

40. Family pension sanctioned in favour of Ms. Soma Rani was subsequently withdrawn. The bank projects that as per regulation No. 24 of State Bank of Bikaner and Jaipur Employees (Pension) Regulations, 1995 (in short the Regulation), an employee who has rendered military service before his appointment in the bank shall continue to draw military pension, if any, and military service rendered him shall not count for his qualifying service. Circular No. Per/23/2000-2001 was issued by the bank on 30.05.2000 specifying therein that family of a pensioner can either draw family pension under the Regulation or under Central Civil Services (Pension) Rules, 1972 (in short the Rules). The bank places reliance on provisions of sub-rule 13(b) of rule 54 of Rules and argues that since one family pension could be availed by Smt. Soma Devi, family pension granted in her favour by the bank was withdrawn.

41. Sub-rule 13(b) of rule 54 of the Rules constrains a person not to get family pension from two sources. For sake of convenience, those provisions are extracted thus:

"13.(b) Family pension admissible under this rule shall not be granted to a person who is already in receipt of Family Pension or is eligible therefore under any other rules of the Central Government or a State Government and/or Public Sector Undertaking/ Autonomous Body/Local Fund under the Central or a State Government :

Provided that a person who is otherwise eligible for family pension under this Rule may opt to receive family pension under this rule if he forgoes family pension admissible from any other source."

42. When family pension from defence was being received by Ms. Soma Rani, bank could not grant her family pension for services rendered by Shri Ushan Kumar Kapoor. Therefore, her family pension was withdrawn. When family pension, sanctioned in favour

of Ms. Soma Rani was withdrawn, total notional income of the family comes to Rs. 3029.00, which is less than 50% of gross salary last drawn by Shri Ushan Kumar Kapoor. Therefore, it is emerging that financial condition of family of deceased Shri Ushan Kumar Kapoor was not at par with financial condition of family of Shri Dayanand Singh.

43. Question would be whether Shri Amit Kumar was discriminated from Shri Pradeep Kumar Kapoor S/o deceased Shri Ushan Kumar Kapoor, who was given compassionate appointment in the bank. For an answer, it would be expedient to note legal provisions in that regard. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

44. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate person belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

45. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality

and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

46. As projected above, family of deceased Shri Dayanand Singh was having income of Rs. 5251.00 per month. Besides that income, his family was having a house on plot of 200 sq.yds. Thus, it is evident that his family was not constrained to spend money on accommodation. On the other hand family of Shri Ushan Kumar Kapoor was not having their own house. In comparison to the family of Shri Dayanand Singh, family of Shri Ushan Kumar Kapoor was not having sufficient means. Consequently, it is emerging over the record that family of Shri Ushan Kumar Kapoor was not similarly placed as family of Shri Dayanand Singh was placed. When these two families were not placed at par, since there was disparity in their financial status, it cannot be said that the two families were to be treated equally. No right accrued in favour of Shri Amit Kumar to claim himself on same pedestal on which Shri Pradeep Kumar Kapoor, son of Shri Ushan Kumar Kapoor, was placed. Therefore, no case of discrimination has been projected.

47. In his affidavit Ex.WW1/A, Shri Amit Kumar details that Smt. Sangeeta Takiar, Ms. Manjeet Kuar and Kamal Chhawar were also given compassionate appointments. However, he does not detail facts relating to their income. During course of his testimony, Shri Amit Kumar opted not to give details of financial status of families of the deceased, Shri Arun Kumar Takiar, Shri Gurbax Singh and Shri C.P. Chhawar. Under these circumstances, it is evident that claim made by Shri Amit Kumar to seek parity with the families of Shri Arun Kumar Takiar, Shri Gurbax Singh and Shri C.P. Chhawar is unfounded. To rebut facts in that regard, the bank projects that income of families of Shri Arun Kumar Takiar, Shri Gurbax Singh and Shri C.P. Chhawar were less than 50% of last drawn salaries of the deceased bread winners. Since no cogent evidence has been projected by the claimant relating to financial status of the families of Shri Arun Kumar Takiar, Shri Gurbax Singh and Shri C.P. Chhawar, I find it difficult to project that the case of Amit Kumar was at par with the case of Ms. Sangeeta Takiar, Ms. Manjeet Kuar and Kamal Chhawar.

48. There is other facet of the coin. Circular No. PER/79/2005-06 was issued by the bank on 20.01.2006. Policy decision was taken by the bank to grant ex-gratia lumpsum to families of its deceased employees. An opinion was formed that on account of introduction of modern state of art technology and online banking, new technology based on projects and services, incumbents at various levels will have to acquire highly qualified skills, which would be a pre-requisite in the job. Since compassionate appointees do not have such qualifications, which fact results in supernumerary manpower. The bank decided that compassionate appointment will not be done under any circumstances. On the other hand, ex-gratia lumpsum amount would be paid, in pursuance of circular referred above.

49. Question for consideration would be as to whether this policy decision made by the bank should be looked down upon by the Tribunal. Such proposition was raised before the Apex Court in Transfer Case (Civil) No. 79/2005, wherein judgment was handed down on 28.02.2008. In that case, Apex Court had considered the economic viability of the tiny deposit scheme discontinued by the State Bank of India. The bank had taken policy decision not to continue with the scheme. On these facts, the Apex Court had opined that an authority introducing a scheme as policy decision, the said authority can discontinue or abandon the scheme in accordance with the other policy decision. For the sake of convenience, observations made by the Apex Court are extracted thus:

"A perusal of the Circular as referred above would clearly show that the Scheme is not economically viable. The Scheme has also contributed a number of frauds. In our view, having regard to the facts mentioned in the order we do not see any arbitrary exercise of power by the authority concerned in discontinuing with the Scheme, as contended by the learned counsel of the petitioners. Similarly, when the concerned authority introduced the Scheme as a policy decision the same authority can discontinue or abandon the Scheme in accordance with a policy decision of the concerned authority. It is now well settled principle of law that the Court does not interfere with the policy decision of the authority concerned unless such decision is tainted with malafide or arbitrary. As already pointed out, on reading of policy decision in a Circular dated 4.6.2001, we do not see any arbitrariness or taint of malafied."

50. As pointed out above, the bank, by way of its policy decision, started a scheme to grant compassionate appointment to families of its employees who die in harness. When viability of that scheme came in question, the bank decided not to grant compassionate appointment. On the other hand, the

bank started scheme of granting *ex-gratia* lump sum amount. The scheme is also based on policy decision. Relying reasoning given by the Apex Court in the aforesaid precedent, I am of the view that this Tribunal cannot find fault with the scheme of *ex-gratia* lump sum amount started by the bank, since no allegation of arbitrariness or taint of *mala fide* is made. This scheme stops appointment on compassionate grounds. Therefore, in the light of these facts, case of Amit Kumar cannot be considered for appointment on compassionate grounds.

51. However, family of deceased Shri Dayanand Singh was having an income of Rs. 5151.00 at the time of his death. This amount is slightly less than 57% of his Gross/net salary, which he was drawing at that time. Considering the fact that during pendency of the present adjudication, the scheme for grant of *ex-gratia* lump sum had come into force, I am of the view that this case is also to be considered in the light of parameters of the said scheme. The scheme applies to employees who die in harness. For *ex-gratia* lump sum, financial condition of the family is to be taken into account. For the purpose, income of the family from the following sources are to be considered:

- (i) Pension, including family pension, if any.
- (ii) Terminal benefits like gratuity, encashment of leave, employees and employers contribution to provident fund etc.
- (iii) Compensation/amount paid by the bank or bank's mutual fund.
- (iv) Proceeds of LIC/any other company's life or other (with accident) insurance policies.
- (v) Investments/deposits in State Bank of Bikaner and Jaipur or other organizations like public sector banks/other banks/post offices/mutual funds etc. and income therefrom.
- (vi) Income of dependents from rent, employment, profession or vocation or any other source.
- (vii) Movable assets and immovable property (including agricultural land, groves etc.) and income therefrom.
- (viii) Loans taken from the bank, other dues payable to the bank and/or other financial institutions with the prior approval of the bank.
- (ix) Any other income of the family.

52. In case total income of the family happens to be less than 60% of the last drawn gross salary of the deceased employee, the family has eligibility for grant of *ex-gratia* lump sum amount. As pointed out above, income of family of deceased Shri Dayanand Singh was less than

60% of his last drawn gross salary. Therefore, family is entitled for grant of *ex-gratia* lump sum amount. In case of employee in the category of Shri Dayanand Singh, this amount cannot be more than Rs. 7 lakh. Therefore, it is announced that family of deceased Dayanand Singh is entitled for *ex-gratia* amount of Rs. 7 lakh. An award is passed in favour of the family of deceased Dayanand Singh and against the bank. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

नई दिल्ली, 7 मार्च, 2013

कांगड़ा 808.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एक बीं सीं के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 9/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07032013 को प्राप्त हुआ था।

[सं एल-2012/183/2007-आई आर (बी-1)
बीं एम् पटनायक, डेस्क अधिकारी

New Delhi, the 7th March, 2013

S.O. 808.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 9/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of The Hongkong & Shanghai Banking Corporation, and their workmen, received by the Central Government on 07.03.2013

[No. L-12012/183/2007-IR (B-I)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

Present

JUSTICE G.S. SARRAF
Presiding Officer

REFERENCE NO. CGIT-1/9 OF 2008

Parties: Employers in relation to the Management of Hongkong & Shanghai Banking Corporation

And

Their workman (Shreenivas R. Kamtam)

Appearances:

For the first party : Ms. Jayeeta Das, Adv.

For the workman : Mr. Koyande, Adv.

State : Maharashtra

Mumbai, dated the 7th day of February, 2013

AWARD

This is reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

“Whether the action of the management of HSBC, Mumbai in terminating the services of Shri Shreenivas R. Kamtam *w.e.f.* 01.6.2007 and not considering him for further employment under Section 25-H read with Section 25-G of the I.D. Act, 1947, is legal, proper and justified? If not, what relief the concerned workman is entitled to and what other instructions are necessary in the matter?”

2. The workman has filed statement of claim and the Bank has filed written statement. The workman has also filed a rejoinder. However, it is not necessary to state the facts and pleadings in details as the parties have filed an application today together with an agreement with the prayer that award be passed in terms of the agreement.

3. In view of the agreement arrived at between the parties, Award is passed as under:

- (a) The Bank shall pay to the workman Shreenivas B. Kamatam a lump sum amount of Rs. 9.00 lakhs which will be subject to deduction of tax at source as per statutory requirements. The aforementioned Rs. of 9.00 lakhs shall be payable by the bank within 10 days after the award is passed by this Tribunal and the workman shall sign a receipt of full and final payment.
- (b) After receipt of the aforementioned amount of Rs. 9.00 lakhs neither the workman, nor his legal heirs, successors, representatives and/or assigns will make any claim of any nature whatsoever financial or otherwise relating to the terms of employment or disengagement of the workman from the services of the Bank.
- (c) No further disputes or legal proceedings of any nature shall be initiated or pursued against the Bank, its employees, officers, directors, successors and/or assigns by the workman or by anyone claiming through him or on his behalf.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 809.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुपराण में केन्द्रीय सरकार इण्डिया गवर्नमेंट मिन्ट प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध ने निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं-1 मुम्बई के पंचाट (संदर्भ संख्या 1/13 ऑफ 2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 05 03 2013 को प्राप्त हुआ था।

[सं. एल-16011/04/2003-आईआर(डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 809.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-1/13 of 2004) of the Central Government Industrial Tribunal cum Labour Court No. 1, Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The India Government Mint and their workman, which was received by the Central Government on 05.03.2013.

[No. L-16011/04/2003-IR(DU)]
JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1**

MUMBAI

Present

JUSTICE GS. SARRAF
Presiding Officer

REFERENCE NO. CGIT-1/13 OF 2004

Parties: Employers in relation to the management of India Government Mint

And

Their workman (J.Y. Rao)

Appearances:

For the first party : Shri Kantharia, Adv.

For the Bombay Mint Industrial

Staff Union : Shri Umesh Nabar, Adv.

State : Maharashtra

Mumbai, dated the 6th day of February, 2013

AWARD

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1)

and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

Whether the demand of the Bombay Mint Industrial Staff Union for not granting promotion to Sh. J.Y. Rao under Assured Career Progression Scheme is justified? If so, to what relief the workman is entitled?

According to the statement of claim filed by the Bombay Mint Industrial Staff Union (hereinafter referred to as the Union) the workman J.Y. Rao was appointed by the first party as Assistant Bullion Keeper on and from 4.2.1971. The workman was issued a memo dt. 21.4.1980 and thereafter he was suspended *vide* order dt. 25.4.1980. A chargesheet dt. 29.4.1980 was issued against the workman on 15.5.1980. The workman was ultimately dismissed by order dt. 8.9.1981. The workman preferred an appeal which was also dismissed. The workman filed second appeal which was allowed in the month of May, 1982 and the workman was reinstated with a fresh enquiry against him. After the inquiry the workman was dismissed from service. The workman preferred an appeal which was partly allowed by reducing the punishment of dismissal to punishment of removal. The workman then filed a Writ Petition No. 1533 of 1984 in the Bombay High Court which came to be dismissed on 1.8.1984. The workman preferred an appeal No. 823 of 1984 which was dismissed on 12.9.1984. The workman filed a Review Petition wherein the High Court passed orders that if the workman tendered apology the same would be considered by the first party and the workman was allowed to withdraw the Review Petition. The workman submitted unconditional apology on 28.1.1985. However, the first party did not consider the apology on the ground that the apology was belated. The workman was constrained to file another Writ Petition challenging the refusal on the part of the first party to accept the unconditional apology tendered by the workman being Writ Petition No. 1372 of 1985. The said Writ Petition was rejected by order dt. 29.7.1985. The workman preferred an appeal before the Division Bench being Appeal No. 706 of 1985 which was also rejected on 13.8.1985. The workman then preferred Special Leave Petition before the Supreme Court being Writ Petition No. 12822 of 1985 and by order dt. 26.8.1986 Special Leave Petition was disposed of directing the first party to take back the workman in the service with effect from the date on which the workman reported for duty and that the workman would not be entitled for back wages. The workman was reinstated *vide* order dt. 29.9.1986. By letter dt. 4.10.1986 the workman approached the first party for restoring his seniority and fixing his pay. He also submitted that the period of absence be treated as special leave. The first party passed an order dt. 2.1.1987 whereby the workman was informed that the seniority would be fixed as per rules next below M.B. Desai.

Though the order specifically stated that the intervening period would be treated as spent on duty for the purpose of continuity of service and pension but the workman was not informed about fixation of his pay. The workman by letter dt. 15.1.1987 approached the first party for pay fixation and pointed out that his seniority was not properly fixed. The workman also pointed out that as per the order of the Supreme Court he was entitled to notional increments and promotion to the higher grade. However, by order dt. 19.2.1987 the workman was informed that the intervening period would be treated as spent on duty only for the purpose of pension indicating that the said period would not be considered as continuity of service for other purposes. The workman preferred an appeal before the Appellate Authority which was dismissed. He then raised an industrial dispute. The Reference CGIT-2/33 of 1993 was also partly dismissed by order dt. 7.6.1995 holding that the demand of the workman for seniority over M.B. Desai was not justified and that the order of the Supreme Court disentitled the workman to receive monetary benefit for the intervening period. According to the statement of claim the Government of India issued Assured Career Progression Scheme (hereinafter referred to as the Scheme) on 9.8.1999. The benefits of the Scheme were given to all the employees except the workman and three others. The Union raised an industrial dispute and during reconciliation proceeding the first party granted benefits of the Scheme on 15.5.2002 to the workman *w.e.f.* 9.7.2001 instead of 9.8.1999 from which date the workman was entitled to the benefits of the Scheme. According to the statement of claim the order passed by General Manager on 2.1.1987 is not disputed by the first party and as such treating the workman junior to the employees who were appointed on later date than the workman is wholly illegal, unjustified and unreasonable. It has, therefore, been prayed that it be held that upgradation/promotion of the workman under the Scheme *w.e.f.* 9.8.1999 fixing his pay at Rs. 5,250/- as on 9.8.1999 is legal, valid, proper and justified.

According to the written statement the matter regarding back wages was decided by the Apex Court and regarding consequential benefits the action of the first party was upheld by CGIT No. 2, Mumbai. As the grant of upgradation under the Scheme is a sort of promotion the matter stands settled by the judgement of the Supreme Court and the award passed by CGIT No. 2, Mumbai. The period of suspension was treated as period spent on duty only for the purpose of pension and the workman was granted benefit of the Scheme *w.e.f.* 9.7.2001 after completing twenty four years of service discounting the suspension period and the period during which he remained out of job. In paragraph 1 of the memo dt. 2.1.1987 there was a typographical error and there instead of words : "for the purpose of continuity of service for pension" the words "for the

purpose of continuity of service and pension" were written. According to the written statement the workman is not entitled to any relief.

Following Issues have been framed:

- (1) Whether the second party workman proves that he is entitled to benefits of Assured Career Progression Scheme with effect from 9th August 1999?
- (2) Whether the second party workman proves that he is entitled to upgradation under Assured Career Progression Scheme with fixation of pay at Rs. 5,250/- as on 9th August 1999?
- (3) Whether the first party proves that for granting benefits under Assured Career Progression Scheme the period between termination of service and reinstatement of the second party workman is required to be omitted as per order dated 2nd January 1987 passed by the Competent Authority?
- (4) Whether the second party workman is entitled to arrears for the period between 9th August 1999 to 9th July 2001 on the basis of fixation of his pay at Rs. 5,250/- as on 9th August 1999?
- (5) What relief the workman is entitled to?
- (6) What Order?

The Union has filed affidavit of the workman J.Y. Rao and he has been cross examined by learned counsel for the first party. The Union has also examined Vinay Paranjpe. The first party has filed affidavits of S.T. Bing and Mahesh Kumar who have been cross examined by learned counsel for the Union. The first party also filed affidavit of Naveen Kumar which was withdrawn by the first party as per the ordersheet dt. 16.1.2012.

Heard Shri Umesh Nabar on behalf of the Union and Shri Kantharia on behalf of the first party.

Issues Nos. 1 to 4:

All these four Issues can be decided together.

The workman was given benefit of the Scheme *w.e.f.* 9.7.2001 whereas the Scheme is dt. 9.8.1999 and the workman claims the benefit from the date. As per the Scheme an employee will be qualified for upgradation on completion of twenty four years of regular service. The case of the workman is that he joined in 1971 and he completed twenty four years of service in 1995 and, therefore, he should be given the benefit of upgradation under the Scheme *w.e.f.* 9.8.1999. On the other hand, according to the first party the workman was suspended *w.e.f.* 25.4.1980 and thereafter he was dismissed on 27.10.1983 and then he was reinstated only on 30.9.1986

and, therefore, this period from 25.4.1980 to 29.9.86 cannot be computed as part of regular service.

The workman has placed reliance on a memo dated 2.1.1987 which has been marked as Ex.W-9 (Ex.M-22) issued by Chief Accounts and Administrative Officer wherein it has been stated that the entire period intervening the date of removal of the workman including the period of suspension and the date he reported for duty be treated as period spent on duty only for the purpose of continuity of service and pension. According to the workman if the period from date of suspension to the date of reinstatement is treated as duty period for the purpose of community of service as per the above memo then he is entitled to upgradation *w.e.f.* 9.8.1999.

On the other hand, the first party says that the period from suspension to reinstatement cannot be considered as part of regular service for the purpose of upgradation under the scheme.

The memo dt. 2.1.1987 Ex.W-9 (M-22) speaks about continuity of service whereas the Scheme Ex.W-26 speaks of regular service. Regular service has been defined in clause 3.2 of the Scheme according to which the regular service shall be interpreted to mean eligibility service counted for regular promotion in terms of relevant recruitment/service rules. In the Award dt. 7.6.1995 (Ex.W-23) passed in Reference No. CGIT-2/33 of 1993 it has been held:

.....But the lordship of the Supreme Court had granted reinstatement and no back wages. In other words the other reliefs were not granted by the Supreme Court. As this is so, he is not entitled to seniority over Desai, not entitled to notional increments as Claimed and other benefits."

CGIT No. 2 Mumbai thus rejected the claim of the workman regarding seniority and consequential benefits like promotion and annual increments. In view of the said Award of CGIT No. 2, Mumbai the period spent by the workman from his suspension to the date of his reinstatement cannot be computed as part of regular service for the purpose of giving benefit of upgradation under the Scheme. It is thus clear that the workman is not entitled to the benefit of the Scheme *w.e.f.* 9.8.1999.

Issues Nos. 1 to 4 are decided against the workman.

Issues Nos. 5: The workman is not entitled to any relief.

Issues Nos. 6: The workman is not entitled to any relief.

Award is passed accordingly. Sd/-

Justice G.S. Sarraf, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का आ 810.— औद्योगिक विवाद अधिनियम, 1947, (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिविल एवियेशन ट्रेनिंग कालेज बमरौली के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट संदर्भ संख्या 1/02 प्रकाशित करती है जो केन्द्रीय सरकार को 4/3/2013 को प्राप्त हुआ था।

[सं एल - 11012/19/2001 - आई आर (एम)]

जे तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 810.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/02) of the Central Government Industrial Tribunal/Labour Court Kanpur now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of M/s Civil Aviation Training College (Bamrauli) and their workman, which was received by the Central Government on 4/3/2013

[No. L 11012/19/2001-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, SRI RAM PARKASH, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, KANPUR.

Industrial Dispute No. 1/02

Between:

Sanjai Kumar, S/o Sri Matroo,
House Number 374, Meera Patti, Transport Nagar,
Allahabad.

And

Principal,
Civil Aviation Training College Bamrauli,
Allahabad.

AWARD

1. Central Government, Mol, New Delhi, *vide* is notification No. L-11012/19/2001/IRM dated 06.08.01, has referred to this tribunal the following issue for adjudication—

2. Whether the action of the management of Civil Aviation Training College, Bamrauli Allahabad in terminating the services of Sri Sanjai Kumar *w. e. f.* 01.11.99 is justified? If not to what relief the workman is entitled for?

3. Brief facts of the case are—

4. At the outset it may be mentioned that there is no co relationship between the reference and the statement of claim field by the claimant. Whereas the present claim statement appears to be under section 2-A of Industrial Disputes Act, 1947, but from the statement of claim filed by the workman it is absolutely clear that he is alleging against the management that that he along with 9 others filed CMWP No 29565 of 99 on 13.07.99 for absorption by opposite party and demanded payment of minimum wages fixed by Central Government on the basis of Supreme Court ruling as mentioned in the petition. The said petition was decided by order dated 22.07.99 directing the petitioner to give representation to the respondent.

5. It may also be pointed out here that from the above pleadings of the Petitioner claimant before this tribunal it is not at all clear that he alone wants to challenge the action of the management or along with others in respect of the above petition. Therefore, the petition itself appears to be not clear and specific.

6. It is also pleaded by the claimant that from the reference order it was clear that he claimant was appointed by the opposite party to work in their maintenance department as electrician helper with effect from 01.09.94 and continued to be in an interrupted services of maintenance department of opposite party up to 31.10.99. and his services were illegally retrenched with effect from 01.11.99. It is also alleged that before terminating the services of the workman opposite party had never issued any charge sheet. The work and conduct of the workman was exemplary. It is also alleged that the services of the workman were illegally terminated orally with effect from 01.11.99, through verbal orders. No compensation was paid to him at the time of his retrenchment. The management has violated the provisos of section 25F and 25N of Industrial Disputes Act, 1947. No notice, notice pay or retrenchment compensation has been paid to the claimant at the time of terminating his services therefore, the action of the opposite party is against the provisions of Industrial Disputes Act, 1947. Apart from the above allegations there are several other allegations against the opposite party but the tribunal is not concerned at all on the points which are against the provisions of Industrial Disputes, Act, 1947. Since it is a case of retrenchment.

7. The claimant on the basis of above has claimed that he should be reinstated in the services of the opposite party with full back wages and all consequential benefits.

8. The claim of the claimant has been refuted by the opposite party on numbers of grounds. The gist of the same that the statement of claim filed by the claimant lacks merit mainly for the reasons; that there never existed direct relationship of master and employee between the opposite party and the claimant, opposite party never issued any

appointment letter in favour of the claimant, nor he ever terminated his services, therefore, question of violating the provisions of Industrial Dispute Act, 1947, does not arise; in fact he was the employee of a contractor with whom the opposite party has not concern; it was the duty of contractor to execute the assigned work for which he wages being paid regularly, the claimant was never required to sign the muster roll, the claimant had never worked under the direct supervision and control of the opposite party. Therefore, on the basis of above it has been prayed that the claim of the claimant be dismissed being devoid of merit.

9. Claimant has also filed rejoinder but nothing new has been pleaded therein.

10. Along with rejoinder affidavit the claimant has filed certain photocopies of the documents.

11. Some more photocopies of documents have also been filled by the claimant *vide* application dated 02.09.04.

12. Workman has also filed a self prepared diary where in certain entries are appearing but by a bare perusal of the same it appears that it has not been authenticated by some responsible officer.

13. Workman has also filed certain originals of the orders of the High Court *vide* application dated 26.3....

14. Sri Sanjai Kumar as examined himself as W.W.1, and Maikoo Lal as W.W.2, whereas management has examined Sri V.K. Gupta, on 06.12.05. M.W.1.

15. W.W.1 has been cross examined at length but nothing has come from his evidence which may make his case believable. Moreover there is no cross examination has been done by the the workman from this witness MWI, therefore, there appears no reason to disbelieve the statement of the witness given in his examination in chief.

16. Thereafter the file come for argument and as none was appeared to cross examine the witnesses of either sides on the date of evidence of respective parties.

17. I have carefully examined the records of the file and find that as none appeared for advancing any arguments from either side on the date fixed, therefore, the case was reserved for award.

18. By a bare perusal of the entire file and evidence of the parties I have come to a conclusion that from the evidence of the parties examined in the case it is very difficult to believe the case of the claimant, therefore, it is held that the claim deserves to be rejected.

19. As already held in the opening paragraph of the award that there is no consonance in between the reference order and the claim petition, from this point of view also the claimant is not entitled for any relief. The evidence adduced by the claimant is not believable and it was his burden to prove his case.

20. Therefore, since the claimant has palpably failed to provide his case therefore, he is not entitled to claim any relief against the management.

21. The reference is therefore, decided against the claimant and in favour of the opposite party.

RAM PAKASH, Presideing Officer

नई दिल्ली, 11 मार्च, 2013

क्रम 811.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) का धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत इन्डस्ट्रीयल प्रेजिट क्रो लिमिटेड सुन्दरगढ़ उड़िसा के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 53/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 4/3/2013 को प्राप्त हुआ था।

[सं. एल - 43011/5/2011- आई आर (एम)]

जोहन तोप्नो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 811.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No. 53/2012) of the Central Government Industrial Tribunal/Labour Court Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Industrial Project (P) Ltd. (Sundargarh Orissa) and their workman, which was received by the Central Government on 4/3/2013

[No. L-43011/5/2011 - IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL— CUM-LABOUR COURT BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 53/2012

Date of Passing Order-11th February, 2013

Between:

M/s. Bharat Industrial Project (P) Ltd.,
Sub-Contractor of M/s. Shapoorji Pallonji Co.
Shanti Memorial Hospital Line,

Uditnagar, Rourkela-12, Dist. Sundargarh,
Orissa.

... 1st Party-Management.

And

The General Secretary,
Sundargarh District Industrial Shramik Sabha,
Mahul Pali, Bastia Sarani, Bisra Road,
Rourkela-769 001.

... 2nd Party-Union.

Appearances:

None For the 1st Party-Management.
None For the 2nd Party-Union.

ORDER

Case taken up today. None of the parties is present. The 2nd Party-Union has not filed any statement of claim despite taking time nearly two and half months before. Therefore it seems that the 2nd Party-Union is either not interested in pursuing the case or has settled the dispute amicably with the 1st Party-Management. Hence it is no use to keep the case pending for long. As such no-dispute award is to be passed in the present circumstance. Accordingly no dispute award is passed.

Reference is answered accordingly.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 812.— औषधिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड मुर्खे के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औषधिक विवाद में केन्द्रीय सरकार औषधिक अधिकरण/श्रम न्यायालय नं 2 मुर्खे के पंचाट (संदर्भ संख्या 47/02) प्रकाशित करती है जो केन्द्रीय सरकार को 4/3/2013 को प्राप्त हुआ था।

[सं. एल-30011/121/2001-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, The 11th March, 2013

S.O. 812.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref No 47/2002) of the Central Government Industrial Tribunal/Labour Court No.-2 Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s. Bharat Petroleum Corporation Ltd. (Mumbai) and their workman, which was received by the Central Government on 4/3/2013

[No. L30011/121/2001-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2,
MUMBAI**

Present

K.B. KATAKE
Presiding Officer

REFERENCE NO. CGIT-2/47 OF 2002

**EMPLOYERS IN RELATION TO THE MANAGEMENT
OF BHARAT PETROLEUM CORPORATION LIMITED**

The General Manager (P & A)
Bharat Petroleum Corporation Ltd.
Bharat Bhavan
4 & 6 Currumbhoy Road
Ballard Estate
Mumbai 400 038.

And

THEIR WORKMEN.
The General Secretary
Petroleum Employees Union
Tel Rasayan Bhavan
Tilak Road
Dadar,
Mumbai 400 014.

Appearances:

For the Employer : Mr. R.S. Pai, Advocate.
For the Workmen : Mr. M.B. Anchan,
Advocate.

Mumbai, dated the 2nd January 2013.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-30011/121/2001-IR (M), dated 03.05.2002 in exercise of the powers conferred by clause(d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. BPCL Ltd., in imposing the punishment of reduction to lower grade from Operator I (Field) Grade 6 to

Operator II (Field) Grade 4 on Shri B.A. Hande justified? If not, to what relief the workman is entitled?"

2. After receipt of the reference, both the parties were served with notices. In response to the notice, the second party union filed its statement of claim *vide* Ex-6. According to the union the second party workman was working as an Operator (Field) at Sewree Installation. On 4/12/1996 he was asked to work as a tally man in the absence of regular Tally Man. While discharging his duties as a Tally Man, Shri Shailendra Pratap Singh Officer Trainee implicated the workman in a false and fabricated incident of accepting bribe of Rs.20/- from Shri Amar Singh PCVO Tank Lorry Driver of Parasnath Transporters. For that a memo dated 9/12/1996 was issued to him. The workman replied the memo and denied the allegations. However chargesheet dt. 23/12/1996 was served upon him for the said misconduct. He replied the charge sheet and denied the charge. Subsequently inquiry was initiated against the workman. In the inquiry he was found guilty. After considering the inquiry proceeding and report and representation of the workman, penalty of demotion from Operator I (Field) Grade-6 to Operator-II (Field) Grade-4 reducing his basic salary from Rs.3,895 to Rs.2,451/. The workman preferred appeal. The same was turned down by the appellate authority by its order dated 16/8/2001.

3. According to the union, the charge was false and baseless. The trainee officer submitted false report in order to show his efficiency. The workman was not given sufficient opportunity to cross examine the witnesses and to defend himself in the inquiry proceeding. The inquiry officer violated the principles of natural justice. The inquiry was not fair and proper. The findings of the inquiry officer were perverse. Therefore workman has raised the industrial dispute. As conciliation failed, as per the report of ALC (C), the Labour Ministry sent the reference to this Tribunal. The workman therefore prays that the inquiry be declared not fair and proper. The findings of the inquiry officer be declared perverse and penalty of his demotion reducing his basic salary from Rs.3,895/- to Rs.2,451/- be declared illegal and unjustified and the same be set aside and first party be directed to pay him the arrears from the date of his demotion and reinstate him to the post of Operator-I (Field).

4. The first party resisted the statement of claim *vide* its written statement Ex-8. According to them the workman while working as Operator-I (Field) Grade-6 at Sewree Installation was found demanding and receiving bribe of Rs.20/- from PCVO Tank Lorry Driver. The Corporation therefore issued chargesheet to him under clause 28.9 for taking bribe for illegal gratification. He was also charged for misusing official position and demanding and receiving bribe/gratification. Departmental inquiry was initiated against the workman. He was given full opportunity to participate in the inquiry. He was defended by his defence

representative Shri Prasad Samant. The inquiry officer Shri S.S. Juneja held the workman guilty of the charges levelled against him. The General manager after considering the report of the IO and representation of the workman, imposed the punishment of demotion of the workman to lower grade. They denied that Mr. Shailendra Prasad Singh, Trainee Officer had made false allegations of corruption against the workman. They denied that opportunity was not given to the workman to defend himself and to cross examine the witnesses. They denied that inquiry officer has violated the principles of natural justice. According to them, the inquiry officer has given fair and full opportunity to the workman to defend himself through his legal representative. The IO held him guilty for accepting bribe from a lorry driver. Therefore the competent authority has imposed penalty of demotion of the workman. The said order is quite just and proper. Therefore they pray that the reference be rejected with cost.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

FINDINGS

Sr. Issues

1. Whether the workman was given fair opportunity to defend himself in accordance with the principles of natural justice and the Standing orders applicable to him?	Yes.
2. Whether findings recorded by in the inquiry report is perverse?	No.
3. What relief if any the workman is entitled to?	No.

REASONS

Issue No. 1:

6. The second party workman herein has contended that he was not given fair and proper opportunity to defend himself. According to him, the inquiry officer violated the principles of natural justice. Therefore it is contended that the inquiry is not fair and proper. In this respect the Id. Adv. for the first party pointed out that, in the cross examination at Ex-13 the second party has admitted that he was served with the charge sheet dt. 23/12/1996. He also admitted that the inquiry was conducted and he appeared in it through his representative Mr. Sawant. He admitted that copy of each proceeding was served to him. He also admitted in his cross that he signed on the copy of the day to day inquiry proceeding. He also admitted that as per his request after 08/07/1997, the inquiry was recorded in Hindi. He also admitted that copy of the inquiry report was served on him and he gave his reply thereto. The said reply is at Ex-14. He further says in his cross that thereafter order of demotion was passed against him. A specific question was put to the workman as to why he complained about the inquiry and findings thereof? He

replied that, witness Amar Singh was not examined to prove the alleged incident of taking money from him. In this respect Id. adv. for the second party submitted that Amar Singh was main witness from whom it is alleged that the workman took bribe of Rs. 20/- However this witness, who was an important witness, was not examined. In this respect I would like to point out that non-examination of a witness at the most would affect findings of the inquiry officer. It does not affect the procedural part of the inquiry.

7. In this respect the Id. adv. for the first party submitted that the inquiry is fair and proper if inquiry officer has complied with the five points laid down by Hon'ble Apex Court in Sur Enamel & Stamping Works Ltd. V/s. The workman AIR 1963 SC 1914 wherein at para 4 of the judgement the Hon'ble Apex Court laid down five points essential for proper inquiry. They are: (i) The employee proceeded against has been informed clearly of the charges levelled against him, (ii) The witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) The employee is given a fair opportunity to cross examine witnesses, (iv) He is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and (v) The inquiry officer records his findings with reasons for the same in his report.

8. In the case in hand all these points were fully complied with. The workman was served with the charge sheet. The inquiry had given full opportunity to the workman to defend himself. He appeared and took part in the proceeding through his representative. The witnesses were examined in his presence and they were cross examined by the legal representative of the workman. Opportunity was given to the workman to examine himself and his witnesses. He examined himself and has not examined any witness. After conclusion of the inquiry copy of the report was served on the workman. Workman also submitted his reply thereto. Thereafter order of demotion has passed. It is the case of the workman that witness Amar Singh was not examined. Therefore he did not get opportunity to cross examine him. Witness who is not examined in the inquiry proceeding by the first party could have been examined by the second party. However second party has not examined him. As Amar Singh was not examined, question of making this witness available for cross examination does not arise. In the circumstances it cannot be said that inquiry officer has violated the principles of natural justice. In the light of the facts and circumstances on record and the guide lines given by Hon'ble Apex Court, it is clear that fair and proper opportunity was given to the workman in the inquiry proceeding. Thus I hold that the inquiry was fair and proper. Accordingly I decide this issue No. 1 in the affirmative.

Issue No. 2:

9. It is the case of the workman that main witness Amar Singh from whom workman alleged to have accepted the bribe amount of Rs. 20/- was not examined. Therefore according to the Id. advocate of the second party, the inquiry officer ought not have relied on the sole evidence of Shri Shailendra Pratap Singh who was then trainee officer. He further submitted that Driver Mr. Amar Singh has not mentioned name of the workman in his complaint, therefore Inquiry Officer has made mistake by relying upon the sole evidence of Mr. Shailendra Pratap Singh. The Id. adv. pointed out the contradiction in the statement of Mr. Shailendra Singh in his cross. He says before the inquiry officer that no other person was there when the workman accepted bribe of Rs. 20/- from the driver. In his earlier statement Shailendra Singh has stated that two other people were there. It was further submitted that those two people were not examined in the inquiry proceeding and there is no corroboration to the testimony of Shailendra Singh in the inquiry proceeding. In this respect the Id. Adv. for the first party rightly pointed out that in the departmental inquiry the charge need not be proved beyond reasonable doubt as required in a criminal proceeding. In departmental inquiry preponderance of probability suffice the purpose. He further submitted that there is no reason to discard the sole testimony of Shri Shailendra Pratap Singh who was a trainee officer and who had personally seen the workman accepting the bribe of Rs. 20/-. He had no reason to implicate the workman falsely. Therefor his testimony can safely be relied upon.

10. It was further pointed out that Mr. Shailendra Singh has not given the complaint Ex-7 immediately on the very day. It was given two days thereafter. It was further contended that challan prepared by Mr. Singh Ex-8 does not contain date and the numbers of the two ten rupee notes. It is further contended that no panchnama was made and there is not independent evidence to corroborate the statement of Shri Shailendra Singh. In this respect at the cost of repetition I would like to point out that it is not a criminal trial to follow all the procedural aspect. It is a departmental inquiry and delay in lodging the report or not preparing panchnama or not mentioning number of the two notes in the challan does not vitiate the inquiry. The inquiry officer has relied on the sole testimony of Shri Shailendra Pratap Singh and held the second party workman guilty of misconduct. In departmental inquiry such a finding even based on mere preponderance of probability can be upheld. The Id. adv. for the first party submitted that findings recorded at domestic inquiry based on some evidence cannot be declared perverse unless it is shown that the findings is not supported by any evidence or is entirely against the whole body of evidence before it. In support of his argument

Id. adv. resorted to Apex Court ruling in M/s. Banaras Electric Light and Power Co. Ltd. v/s. the Labour Court II, Lucknow & Ors. 1972 II L.L.J. 328 wherein on the point Hon'ble Court observed that;

".....an Industrial Tribunal would not be justified in characterising the findings recorded at the domestic inquiry as perverse unless it can be shown that such finding is not supported by any evidence or is entirely opposed to the whole body of evidence adduced before it. In a domestic inquiry once a conclusion is deduced from the evidence, it is not possible for some other authority to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence."

11. In this respect the Id. adv. further submitted that the workman herein was neither dismissed nor discharged from service. On the other hand he was awarded punishment of demotion. Therefore he submitted that under Section 11-A the Tribunal has no jurisdiction to entertain this reference and cannot give any relief to the workman. In support of his argument the Id. adv. for the first party resorted to Apex Court ruling in *South Indian Cashew Factories Workers Union V/s. Kerala State Cashew Development Corporation & Ors.* (2006) 5 SCC 201 wherein on the point in para 16 of the judgement Hon'ble Apex Court held that;

"Section 11-A of the Industrial Disputes Act, 1947 gives ample power to the Labour Court to reappraise the evidence adduced in the inquiry and also sit in appeal over the decision of the employer in imposing punishment. But that section is applicable only in the case of dismissal or discharge of a workman. Since Section 11-A was not applicable, the Labour Court had no power to reappraise the evidence to find out whether the findings of the inquiry officer were correct or not or whether the punishment imposed was adequate or not."

12. In the light of above ruling and discussion I hold that the inquiry officer has relied upon the testimony of Shailendra Pratap Singh and recoreded the findings. The said findings thus cannot be said without evidence or against the evidence on record. Thus the findings of the inquiry officer cannot be called perverse. Furthermore the reference is not tenable as it is beyond the scope of Section 11-A of Industrial Disputes Act. Accordingly I decide this issue No. 2 in the negative.

Issue No. 3:

13. In the light of above discussion it is clear that the workman was neither dismissed nor discharged from

service. Therefore Section 11-A of I.D. Act is not applicable which gives the jurisdiction to this Tribunal to adjudicate the issue of fairness of inquiry and point of punishment. In the case at hand the second party was awarded punishment of demotion. Therefore the reference is not tenable. Consequently I hold that the workan is not entitled to any relief. Accordingly I decide this issue No. 3 in the negative and proceed to pass the following order:

ORDER

The reference is dismissed with no order as to cost.

Date: 02-01-2013 K.B. KATAKE, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कला 813.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ड्यूटीरेक्टर (डिरिलिंग) जियोलैजिकल सर्वे आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 7/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/03/2013 को प्राप्त हुआ था।

[सं एल-42012/47/2011-आई आर (डी यू)]

जे तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 813.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, 14 of 1947, the Central Government hereby publishes the Award (Ref. No. 7/2012) of the Central Government Industrial Tribunal cum Labour Court, Jaipur as shown in the Annexure, in the Industrial Dispute between The Director (Drilling), Geological Survey of India and their workman, which was received by the Central Government on 04.03.2013.

[No. L-42012/47/2011-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JAIPUR**

Presiding Officer

SH. N.K. PUROHIT

I.D. 7/2012

Reference No. L-42012/47/2010 [IR(DU)] dated: 23.11.2011

Shri Bhartu
S/o Shri Mangilal

R/o Village Kashirampura
Post-Gudla, Distt. Karoli (Raj.)

V/s

The Director (Drilling)
Geological Survey of India,
Western Region, Jhalana Doongri,
Jaipur.

Present:

For the applicant Union: Sh. Kailash Chandra Kumbhakar.

For the Non-applicant : Ex-Party.

AWARD

31.1.2013

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of Geological Survey of India, Jaipur in terminating the services of Shri Bhartu, w.e.f. 16.9.2001 is legal & justified? What relief the workman is entitled to?"

2. The workman in his statement of claim has pleaded that he was employed as worker in the month of January, 2001 at the Geological Survey of India under the Director (drilling), Western Region, Jhalana Dungri, Jaipur. He has further pleaded that his services were terminated by verbal order on 16.09.01. Despite, he had continuously worked for more than 240 days, his services were terminated without any notice pay in lieu of notice or compensation. He has also pleaded that at the time of his termination junior to him were retained by the non applicant and after his termination new hands were given recruitment. Thus, the non applicant has violated the provisions of sections 25-F, 25-G and 25-H of the I.D. Act. He has prayed to declare his termination as illegal and unjust and has also prayed for his reinstatement with back wages & consequential benefits.

3. None appeared on behalf of the non applicant despite service of registered notice. Therefore, order to proceed Ex-Parte against the non applicant was passed on 14.08.12.

4. The workman in support of his claim has submitted his affidavit and documents Ex-W 1 to W 6.

5. Heard the arguments of the learned representative on behalf of the workman and perused the relevant record.

6. Initial burden was on the workman to prove that he had in fact worked for 240 days during preceding 12 months from the date of his alleged termination *i.e.*

16.09.01 and his termination was in violation of Sec 25-F of the I.D. Act.

7. The workman in his affidavit has stated that he had worked for more than 240 days during the period of 1 year. In support of his statement he has produced photocopies of attendance register for the period 16.04.01 to 15.09.01 Attendance register Ex-W 5 reveals that his actual working days during said period were as under:—

16.04.01 to 15.05.01	—	10 Days
16.05.01 to 15.06.01	—	31 Days
16.06.01 to 15.07.01	—	30 Days
16.07.01 to 15.08.01	—	31 Days
16.08.01 to 15.09.01	—	11 Days

Total: 113 Days

8. It is evident from the above working days shown in the attendance register Ex-W5 that the actual working days of the workman during preceding 12 months from the date of termination 16.09.01 were 113 days only & he had not worked for more than 240 days. Since, the workman has failed to establish that he had worked for requisite period during preceding 12 months from the date of his termination, the non applicant was under no obligation to comply with the provisions under Section 25-F of the I.D. Act.

9. The learned representative on behalf of the workman has submitted that Section 25-G and 25-H are independent of Section 25-F of the I.D. Act and even if the workman could not be able to establish his case under Section 25-F of the I.D. Act, it is still open him to make out his case under Section 25-G and 25-H of the I.D. Act. He has also submitted that the non applicant has not appeared to contest the claim of the workman and Ex-parte proceedings have been drawn against the non applicant. In absence of any evidence in rebuttal there is no reason to disbelieve the evidence of the workman. He has further submitted that on the basis of the evidence of the workman it has been established that action of the non applicant was in violation of Section 25-G and 25-H of the I.D. Act. In support of his contention the learned representative has relied on JT 1996(7) SC 181, 1981(42) FLR 381(Delhi), 1987(55) FLR 527(Guj.), 1997(76) FLR 393 (Allahabad).

10. I have given my thoughtful consideration to the above submissions.

11. In JT 1996 (7) SC 181 Hon'ble Apex court has held that Chapter V-A providing for retrenchment is not enacted only for the benefit of the workman to whom section 25-F applies but for all cases of retrenchment.

12. Thus, it is not necessary that retrenchment must be covered by section 25-F so as to attract the applicability of section 25-G & 25-H which are independent & distinct sections & provisions of above sections do not require that the workman should have been in continuous employment within the meaning of section 25-B.

13. Therefore, even if, the workman has failed to establish that his termination was in violation of provisions of section 25-F of the I.D. Act, the question survives for consideration is whether the non-applicant has violated the provisions of section 25-G & H of the I.D. Act as alleged by the workman.

14. The name of the persons who were juniors to him & allegedly retained by the non-applicant have not been mentioned in the statement of claim. Similarly, the names of the persons who were allegedly given employment after termination of the services of the workman have also not been mentioned.

15. In 1981 (42) FLR 381 referred to by the learned representative for the workman Hon'ble Delhi H.C. has observed:—

"It is now well established that the pleadings have to be specific. The plea, in the present case, that the juniors had been retained and the services of the senior workmen had been terminated was raised by the workmen. It was, therefore, for the workmen to lead evidence and prove the violation of provisions of Section 25-G"

16. In the present case, the workman has stated in his affidavit that junior persons to him were retained after termination of his services & new persons have been engaged. He has further stated as below:

मेरे से जूनियर एवं नये व्यक्ति उँकार, चेतराम, पूरण, रामेतार मीना मेरी मुक्ति के बाद भी काम कर रहे थे और काम पर लिया था।

17. The workman has stated that the above persons were junior to him & it has also been stated that they were employed after his termination, therefore, the statement is very vague & contradictory. It is not clear amongst above named persons who were junior to him & who were given recruitment after his termination. Further, the names of above persons were not disclosed in the statement of claim & pleadings are not specific. The workman has not adduced any documentary evidence in support of his statement that junior persons were retained & new persons were given recruitment after his termination. Therefore, evidence adduced by the workman in this regard cannot be relied on.

18. For the foregoing reasons, the workman has failed to prove that junior persons to him were retained in the

establishment in violation of provisions of section 25-G & new persons were given employment after termination of his services without any offer of re-employment in violation of section 25-H of the I.D. Act.

19. In view of above discussions, the workman has failed to prove that the action of the management in terminating his services was in violation of section 25-F & 25-G of the I.D. Act. He has also failed to prove any violation of provisions of 25-H of the I.D. Act. Therefore, it is held that the action of the non-applicant was not illegal & unjustified. Resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

20. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का आ 814.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर (ड्रिलिंग) ज्योलोजिकल सर्वे आफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट संदर्भ संख्या 4/2012 को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/03/2013 को प्राप्त हुआ था।

[सं एल-42012/46/2011- आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 814.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2012) of the Central Government Industrial Tribunal cum Labour Court, Jaipur as shown in the annexure, in the Industrial dispute between the The Director (Drilling), Geological Survey of India and their workman, which was received by the Central Government on 04.03.2013.

[No. L-42012/46/2011-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL— CUM-LABOUR COURT, JAIPUR

Presiding Officer
Sh. N.K. Purohit

I.D.4/2012

Reference No. L-42012/46/2010 [IR (DU)]
dated: 23.11.2011

Shri Sooger Singh Jatav

S/o Shri Ramkhiladi
R/o Village Kashirampura
Post-Gudla, Distt: Karoli (Raj.)

V/s

The Director (Drilling)
Geological Survey of India,
Western Region, Jhalana Doongri,
Jaipur.

Present:

For the applicant Union : Sh. Kailash Chandra Kumbhakar.

For the Non-applicant : Ex-Party.

AWARD

31.1.2013

1. The Central Government in exercise of the powers conferrd under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of Geological Survey of India, Jaipur in terminating the services of Shr Sooger Singh Jatav, w.e.f. 16.9.2001 is legal & justified? What relief the workman is entitled to?"

2. The workman in his statement of claim has pleaded that he was employed as worker in the month of January, 2001 at the Geological Survey of India under the Director (drilling), Western Region, Jhalana Dungri, Jaipur. He has further pleaded that his services were terminated by verbal order on 16.09.01. Despite, he had continuously worked for more than 240 days, his services were terminated without any notice pay in lieu of notice or compensation. He has also pleaded that at the time of his termination junior to him were retained by the non applicant and after his termination new hands were given recruitment. Thus, the non applicant has violated the provisions of sections 25-F, 25-G and 25-H of the I.D.Act. He has prayed to declare his termination as illegal and unjust and has also prayed for his reinstatement with back wages & consequential benefits.

3. None appeared on behalf of the non applicant despite service of registered notice. Therefore, order to proceed Ex-parte against the non applicant was passed on 14.08.12.

4. The workman in support of his claim has submitted his affidavit and documents Ex-W 1 to W 6.

5. Heard the arguments of the learned representative on behlf of the workman and perused the relevant record.

6. Initial burden was on the workman to prove that he had in fact worked for 240 days during preceding

12 months from the date of his alleged termination *i.e.* 16.09.01 and his termination was in violation of Sec. 25-F of the I.D.Act.

7. The workman in his affidavit has stated that he had worked for more than 240 days during the period of 1 year. In support of his statement he has produced photocopies of attendance register for the period 16.04.01 to 15.09.01. Attendance register Ex-W5 reveals that his actual working days during said period were as under:—

16.04.01 to 15.05.01	—	17 Days
16.05.01 to 15.06.01	—	31 Days
16.06.01 to 15.07.01	—	30 Days
16.07.01 to 15.08.01	—	31 Days
16.08.01 to 15.09.01	—	12 Days
Total :		121 Days

8. It is evident from the above working days shown in the attendance register Ex-W5 that the actual working days of the workman during preceding 12 months from the date of termination 16.09.01 were 121 days only & he had not worked for more than 240 days. Since, the workman has failed to establish that he had worked for requisite period during preceding 12 months from the date of his termination, the non applicant was under no obligation to comply with the provisions under Section 25-F of the I.D.Act.

9. The learned representative on behalf of the workman has submitted that Section 25-G and 25-H are independent of Section 25-F of the I.D.Act and even if the workman could not be able to establish his case under Section 25-F of the I.D.Act, it is still open him to make out his case under Section 25-G and 25-H of the I.D.Act. He has also submitted that the non applicant has not appeared to contest the claim of the workman and *Ex-parte* proceedings have been drawn against the non applicant. In absence of any evidence in rebuttal there is no reason to disbelieve the evidence of the workman. He has further submitted that on the basis of the evidence of the workman it has been established that action of the non applicant was in violation of Section 25-G and 25-H of the I.D.Act. In support of his contention the learned representative has relied on JT 1996(7) SC 181, 1981(42) FLR 381 (Delhi), 1987 (55) FLR 527 (Guj.) 1997 (76) FLR 393 (Allahabad).

10. I have given my thoughtful consideration to the above submissions.

11. In JT 1996 (7) SC 181 Hon'ble Apex court has held that Chapter V-A providing for retrenchment is not enacted

only for the benefit of the workman to whom section 25-F applied but for all cases of retrenchment.

12. Thus, it is not necessary that retrenchment must be covered by section 25-F so as to attract the applicability of section 25-G & 25-H which are independent & distinct sections & provisions of above sections do not require that the workman should have been in continuous employment within the meaning of section 25-B.

13. Therefore, even if, the workman has failed to establish that his termination was in violation of provisions section 25-F of the I.D. Act, the question survives for consideration is whether the non-applicant has violated the provisions of section 25-G & H of the I.D. Act as alleged by the workman.

14. The name of the persons who were juniors to him & allegedly retained by the non-applicant have not been mentioned in the statement of claim. Similarly, the names of the persons who were allegedly given employment after termination of the services of the workman have also not been mentioned.

15. In 1981 (42) FLR 381 referred to by the learned representative for the workman Hon'ble Delhi H.C. has observed:—

"It is now well established that the pleadings have to be specific. The plea, in the present case, that the juniors had been retained and the services of the senior workmen had been terminated was raised by the workmen. It was, therefore, for the workmen to lead evidence and prove the violation of provisions of Section 25-G"

16. In the present case, the workman has stated in his affidavit that junior persons to him were retained after termination of his services & new persons have been engaged. He has further stated as below:

मेरे से जूनियर एवं नये व्यक्ति उंकार, विरेन्द्र, चेतराम, पूरण मीना, फरशाती, रक्खीर मेरी सेवा मुक्ति के बाद भी काम कर रहे थे और काम पर लिया था।

17. The workman has stated that the above persons were junior to him & it has also been stated that they were employed after his termination, therefore, the statement is very vague & contradictory. It is not clear amongst above named persons who were junior to him & who were given recruitment after his termination. Further, the names of above persons were not disclosed in the statement of claim & pleadings are not specific. The workman has not adduced any documentary evidence in support of his statement that junior persons were retained & new persons were given recruitment after his termination. Therefore, evidence adduced by the workman in this regard cannot be relied on.

18. For the foregoing reasons, the workman has failed to prove that junior persons to him were retained in the establishment in violation of provisions of section 25-G & new persons were given employment after termination of his services without any offer of re-employment in violation of section 25-H of the I.D. Act.

19. In view of above discussions, the workman has failed to prove that the action of the management in terminating his services was in violation of section 25-F & 25-G of the I.D. Act. He has also failed to prove any violation of provisions of 25-H of the I.D. Act. Therefore, it is held that the action of the non-applicant was not illegal & unjustified. Resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

20. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कार्यालय 815.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैरेसिन इन्जीनियर, एमेझैंपर्स बीकानेर के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट संदर्भ संख्या 41/2012 को प्रकाशित करती है जो केन्द्रीय सरकार को 08032013 को प्राप्त हुआ था।

[सं. एल-13011/10/2011-आईआर (डीयू)]
जोहन तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 815.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2012) of the Central Government Industrial Tribunal cum Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the The Garrison Engineers, MES, Bikaner and their workman, which was received by the Central Government on 08.03.2013.

[No. L-13011/10/2011-IR(DU)]
JOHAN TOPNO Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, JAIPUR

Presiding Officer
Sh. N.K. Purohit

I.D. 41/2012

Reference No. L-13011/10/2011 [(IR(DU)]
dated : 24.2.2012

Sh. Gauri Shankar

S/o Shri Heeralal Dhobi
R/o Rani Bazar
Near Pardeson Ki Bagichi
Bikaner.

V/s

Garrison Engineers
GE(P), MES, Bikaner,
Bikaner-334001

AWARD

8.2.2013

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of GE(P), MES, Bikaner in fixation of pay of the workman Shri Gauri Shankar on grant of benefit of 1st ACP w.e.f 2002 is legal & justified? What relief the workman is entitled to and from which date?"

2. Pursuant to the receipt of the reference order, registered notices were issued to both the parties. Shri Jitender Yadav, representative on behalf of the non-applicant appeared on 29.06.2012 but none appeared on behalf of the applicant therefor, again registered notices were issued. On next date *i.e.* 11.9.12 the representative on behalf of the non-applicant was present. The acknowledgement receipt of the registered notice sent to the applicant was returned with endorsement "Talash". Thus, registered notice was again issued to the applicant. Upon perusal of the acknowledgement receipt of the registered notice issued to the applicant for filing his claim statement on 3.1.2013, it appears that the same has been served upon the applicant but despite service of the registered notice he did not appear to file his statement of claim.

3. Upon perusal of the proceedings, it reveals that on 3.1.13 none appeared on behalf of both the parties. On that date presiding officer was on the leave. Again on next date 7.2.13 none appeared on behalf of both the parties. Under these circumstances, case was reserved for passing the award.

4. In above factual backdrop, no material could be brought on record for adjudication of the reference order under consideration on merits. It appears that the applicant is not willing to contest the case further, therefore, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

5. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 816.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुर्गांव पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय मुर्गांव-I के पंचाट (संदर्भ संख्या सी जी आई टी-1/10/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं. एल-36011/04/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th March, 2013

S.O. 816.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT-1/10 of 2007) of the Central Government Industrial Tribunal/Labour Court-1, MUMBAI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MORMUGAO PORT TRUST, and their workman, which was received by the Central Government on 11.03.2013

[No. L-36011/04/2006-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI CAMP: GOA

Present

JUSTICE G.S. SARAF
Presiding Officer

REFERENCE NO. CGIT-1/10 OF 2007

Parties:

Employers in relation to the management of
Mormugao Port Trust

And

Their workmen

Appearances:

For the first party : Shri Vilas A. Biliye, Representative.
For the Union : Shri C.B. Cautilho, Representative
State : Maharashtra

Dated the 20th day of February, 2013

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1)

and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

Whether the action of the management of Mormugao Port Trust, Goa in deducting electricity charges from the salaries of occupants of Bachelor accommodation is legal and justified? If not, to what relief the workmen are entitled to?

2. According to the statement of claim filed by Mormugao Port and Railway Workers Union no individual meter was provided for the bachelor quarter units as administration was bearing the electricity charges as welfare measure. The bachelor accommodation was accepted by the employees with the implicit understanding that no electricity and water charges would be borne by them. The Port administration has granted concession to class III and IV employees occupying in divided Port quarters and has been bearing 100 units of electricity consumption in every bill of each quarter. This has been approved by Board Resolution No. 7 *w.e.f* 1996. However, this benefit has been withdrawn and denied to the residents of the bachelor quarters which is unfair and unwarranted. The Port administration arbitrarily deducted amount from all such occupants of bachelor accommodation from the year 1982 onwards which is against all norms and in violation of Payment of Wages Act. It has, therefore, been prayed that all the employees should be refunded the money recovered from their salary.

3. An application has been filed by General Secretary, Mormugao Port Trust and Railway Workers Union that he does not want to lead any evidence and pursue the matter and, therefore, the reference be disposed of accordingly.

4. In view of the above application the workmen are not entitled to any relief.

Award is passed accordingly.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का आ 817.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुरागांव पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I मुम्बई के पंचाट (संदर्भ संखा सी जी आई ये 1/19/ 2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2011 को प्राप्त हुआ था।

[सं. एल-36011/07/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 11th March, 2013

S.O. 817.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT-1/19 of 2011) of the Central Government Industrial Tribunal/Labour Court-1, MUMBAI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MORMUGAO PORT TRUST and their workman, which was received by the Central Government on 11.03.2013

[No. L-36011/07/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

CAMP: GOA

Present

JUSTICE G.S. SARRAF
Presiding Officer

REFERENCE NO. CGIT-1/19 OF 2011

Parties:

Employers in relation to the management of
Mormugao Port Trust

And

Their workmen

Appearances:

For the first party : Shri Vilas A. Biliye, Representative.

For the Union : Not present.

State : Maharashtra

Dated the 20th day of February, 2013

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

Whether the action of the management of Mormugao Port Trust, Goa in denying Second Financial Upgradation under ACP Scheme to 09 (Nine) employees (as per Annexure-I) is legal and justified? What relief the workmen are entitled for?

2. No one has appeared on behalf of Goa Port and Dock Employees Union inspite of service of notice.

3. In absence of any pleading and proof the nine workmen are not entitled to any relief.

Award is passed accordingly.

JUSTICE G.S. SARRAF, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कारण 818.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ड्रिलिंग (जियोलैजिकल सर्वे आफ इण्डिया के प्रबंधतंत्र के संबद्ध में नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 5/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-03-2013 को प्राप्त हुआ था।

[सं. एल-42012/50/2011-आईआर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 818.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial Dispute between the The Director (Drilling), Geological Survey of India and their workman, which was received by the Central Government on 04.03.2013

[No. L-42012/50/2011-IR (DU)]

JOHAN TOPNO, Under Sec.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, JAIPUR

SH. N. K. PUROHIT

Presiding Officer

I.D. 5/2012

Reference No. L-42012/50/2010 [IR(DU)] dated
23.11.2011

Shri Halke
S/o Shri Ramsahai
R/o Village Kashirampura
Post-Gudla, Distt: Karoli (Raj.)

V/s

The Director (Drilling)
Geological Survey of India
Western Region, Jhalana Doongri,
Jaipur.

Present:

For the applicant Union : Sh. Kailash Chandra Kumbhakar.

For the Non-applicant : Ex-Party.

AWARD

31.1.2013

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of Geological Survey of India, Jaipur in terminating the Services of Shri Halke, w.e.f. 16.9.2001 is legal and justified? What relief the workman is entitled to?"

2. The workman in his statement of claim has pleaded that he was employed as worker in the month of January, 2001 at the Zoological Survey of India under the Director (Drilling). Western Region, Jhalana Dngri, Jaipur. He has further pleaded that his services were terminated by verbal order on 16.09.2001. Despite, he had continuously worked for more than 240 days, his services were terminated without any notice pay in lieu of notice or compensation. He has also pleaded that at the time of his termination junior to him were retained by the non-applicant and after his termination new hands were given recruitment. Thus, the non-applicant has violated the provisions of sections 25-F, 25-G and 25-H of the I.D. Act. He has prayed to declare his termination as illegal and unjust and has also prayed for his reinstatement with back wages and consequential benefits.

3. None appeared on behalf of the non-applicant despite service of registered notice. Therefore, order to proceed Ex-Part against the non-applicant was passed on 14.08.2012.

4. The workman in support of his claim has submitted his affidavit and documents Ex-W1 to W6.

5. Heard the arguments of the learned representative on behalf of the workman and perused the relevant record.

6. Initial burden was on the workman to prove that he had in fact worked for 240 days during preceding 12 months from the date of his alleged termination *i.e.* 16.09.2001 and his termination was in violation of Sec. 25-F of the I.D. Act.

7. The workman in his affidavit has stated that he had worked for more than 240 days during the period of 1 year. In support of his statement he has produced photocopies of attendance register for the period 16.04.2001

to 15.09.2001. Attendance register Ex-W5 reveals that his actual working days during said period were as under:—

16.04.2001 to 15.05.2001	—	10 days
16.05.2001 to 15.06.2001	—	31 days
16.06.2001 to 15.07.2001	—	30 days
16.07.2001 to 15.08.2001	—	31 days
16.08.2001 to 15.09.2001	—	11 days
Total:		113 Days

8. It is evident from the above working days shown in the attendance register Ex-W5 that the actual working days of the workmen during preceding 12 months from the date of termination 16.09.2001 were 113 days only and he had not worked for more than 240 days. Since, the workman has failed to establish that he had worked for requisite period during preceding 12 months from the date of his termination, the non-applicant was under no obligation to comply with the provisions under Section 25-F of the I.D. Act.

9. The learned representative on behalf of the workman has submitted that Section 25-G and 25-H are independent of Section 25-F of the I.D. Act and even if the workman could not be able to establish his case under Section 25-F of the I.D. Act, it is still open him to make out his case under Section 25-G and 25-H of the I.D. Act. He has also submitted that the non-applicant has not appeared to contest the claim of the workman and Ex-parte proceedings have been drawn against the non-applicant. In absence of any evidence in rebuttal there is no reason to disbelieve the evidence of the workman. He has further submitted that on the basis of the evidence of the workman it has been established that action of the non-applicant was in violation of Section 25-G and 25-H of the I.D. Act. In support of his contention the learned representative has relied on JT 1996 (7) SC 181, 1981 (42) FLR 381 (Delhi), 1987 (55) FLR 527 (Guj.), 1997 (76) FLR 393 (Allahabad).

10. I have given my thoughtful consideration to the above submissions.

11. In JT 1996 (7) SC 181 Hon'ble Apex Court has held that Chapter V-A providing for retrenchment is not enacted only for the benefit of the workman to whom section 25-F applies but for all cases of retrenchment.

12. Thus, it is not necessary that retrenchment must be covered by section 25-F so as to attract the applicability of section 25-G and 25-H which are independent and distinct sections and provisions of above sections do not require that the workman should have been in continuous employment within the meaning of section 25-B.

13. Therefore, even if, the workman has failed to establish that his termination was in violation of provisions

of section 25-F of the I.D. Act, the question survives for consideration is whether the non-applicant has violated the provisions of section 25-G and H of the I.D. Act as alleged by the workman.

14. The name of the persons who were juniors to him and allegedly retained by the non-applicant have not been mentioned in the statement of claim. Similarly, the names of the persons who were allegedly given employment after termination of the services of the workman have also not been mentioned.

15. In 1981 (42) FLR 381 referred to by the learned representative for the workman Hon'ble Delhi H.C. has observed.

"It is now well established that the pleadings have to be specific. The plea, in the present case, that the juniors had been retained and the services of the senior workmen had been terminated was raised by the workmen. It was, therefore, for the workmen to lead evidence and prove the violation of provisions of Section 25-G."

16. In the present case, the workman has stated in his affidavit that junior persons to him were retained after termination of his services and new persons have been engaged. He has further stated as below.

मेरे से जूनियर एवं नये व्यक्ति डैकर, रामकौश, चेतराम, पूर्ण मीना, मेरी सेवा मुक्ति के बाद भी काम कर रहे थे और और काम पर लगाया था।

17. The workman has stated that the above persons were junior to him and it has also been stated that they were employed after his termination, therefore, the statement is very vague and contradictory. It is not clear amongst above named persons who were junior to him and who were given recruitment after his termination. Further, the names of above persons were not disclosed in the statement of claim and pleadings are not specific. The workman has not adduced any documentary evidence in support of his statement that junior persons were retained and new persons were given recruitment after his termination. Therefore, evidence adduced by the workman in this regard cannot be relied on.

18. For the foregoing reasons, the workman has failed to prove that junior persons to him were retained in the establishment in violation of provisions of section 25-G and new persons were given employment after termination of his services without any offer of re-employment in violation of section 25-H of the I.D. Act.

19. In view of above discussions, the workman has failed to prove that the action of the management in terminating his services was in violation of Section 25-F & 25-G of the I.D. Act. He has also failed to prove any violation of provisions of 25-H of the I.D. Act. Therefore, it is held that the action of the non-applicant was not illegal and

unjustified. Resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

20. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का आ 819.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ड्राइरेक्टर (ड्रिलिंग) ज्योलोजिकल सर्वे ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 6/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2013 को प्रति हुआ था।

[सं एल-42012/49/2011-आई आर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 819.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the The Director (Drilling), Geological Survey of India and their workman, which was received by the Central Government on 04.03.2013.

[No. L-42012/49/2011-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL— CUM-LABOUR COURT, JAIPUR.

Sh. N.K. Purohit

Presiding Officer

I.D. 6/2012

Reference No. L-42012/49/2010 [IR (DU)]
dated 23.11.2011

Shri Nihal Singh
S/o Shri Latura Ram
R/o Village Kashirampura
Post-Gudla, Distt: Karoli (Raj.)

V/s

The Director (Drilling)
Geological Survey of India
Western Region, Jhalana Doongri,
Jaipur.

Present:

For the Applicant Union : Shri Kailash Chandra Kumbhakar.

For the Non-applicant : Ex-Party.

AWARD

31.1.2013

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of Geological Survey of India, Jaipur in terminating the services of Shri Nihal Singh, w.e.f. 16.9.2001 is legal and justified? What relief the workman is entitled to?"

2. The workman in his statement of claim has pleaded that he was employed as worker in the month of January, 2001 at the Zoological Survey of India under the Director (Drilling), Western Region, Jhalana Doongri, Jaipur. He has further pleaded that his services were terminated by verbal order on 16.09.2001. Despite, he had continuously worked for more than 240 days, his services were terminated without any notice pay in lieu of notice or compensation. He has also pleaded that at the time of his termination junior to him were retained by the non-applicant and after his termination new hands were given recruitment. Thus, the non-applicant has violated the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act. He has prayed to declare his termination as illegal and unjust and has also prayed for his reinstatement with back wages and consequential benefits.

3. None appeared on behalf of the non-applicant despite service of registered notice. Therefore, order to proceed Ex-Parte against the non-applicant was passed on 14.08.2012.

4. The workman in support of his claim has submitted his affidavit and documents Ex-W1 to W6.

5. Heard the arguments of the learned representative on behalf of the workman and perused the relevant record.

6. Initial burden was on the workman to prove that he had in fact worked for 240 days during preceding 12 months from the date of his alleged termination *i.e.* 16.09.2001 and his termination was in violation of Sec. 25-F of the I.D. Act.

7. The workman in his affidavit has stated that he had worked for more than 240 days during the period of 1 year. In support of his statement he has produced

photocopies of attendance register for the period 16.04.2001 to 15.09.2001. Attendance register Ex-W5 reveals that his actual working days during said period were as under:—

16.04.2001 to 15.05.2001	4 Days
16.05.2001 to 15.06.2001	31 Days
16.06.2001 to 15.07.2001	30 Days
16.07.2001 to 15.08.2001	31 Days
16.08.2001 to 15.09.2001	12 Days
Total:	108 Days

8. It is evident from the above working days shown in the attendance register Ex-W5 that the actual working days of the workman during preceding 12 months from the date of termination 16.09.2001 were 108 days only and he had not worked for more than 240 days. Since, the workman has failed to establish that he had worked for requisite period during preceding 12 months from the date of his termination, the non-applicant was under no obligation to comply with the provisions under Section 25-F of the I.D. Act.

9. The learned representative on behalf of the workman has submitted that Section 25-G and 25-H are independent of Section 25-F of the I.D. Act and even if the workman could not be able to establish his case under Section 25-F of the I.D. Act, it is still open him to make out his case under Section 25-G and 25-H of the I.D. Act. He has also submitted that the non-applicant has not appeared to contest the claim of the workman and Ex-part proceedings have been drawn against the non-applicant in absence of any evidence in rebuttal there is no reason to disbelieve the evidence of the workman. He has further submitted that on the basis of the evidence of the workman it has been established that action of the non-applicant was in violation of Section 25-G and 25-H of the I.D. Act. In support of his contention the learned representative has relied on JT 1996 (7) SC 181, 1981 (42) FLR 381 (Delhi), 1987 (55) FLR 527 (Guj.), 1997 (76) FLR 393 (Allahabad).

10. I have given my thoughtful consideration to the above submissions.

11. In JT 1996 (7) SC 181 Hon'ble Apex Court has held that Chapter V-A providing for retrenchment is not enacted only for the benefit of the workman to whom section 25-F applies but for all cases of retrenchment.

12. Thus, it is not necessary that retrenchment must be covered by section 25-F so as to attract the applicability of Section 25-G & 25-H which are independent and distinct sections and provisions of above sections do not require that the workman should have been in continuous employment within the meaning of Section 25-B.

13. Therefore, even if, the workman has failed to establish that his termination was in violation of provisions of section 25-F of the I.D. Act, the question survives for consideration is whether the non-applicant has violated the provisions of Section 25-G & H of the I.D. Act as alleged by the workman.

14. The name of the persons who were juniors to him and allegedly retained by the non-applicant have not been mentioned in the statement of claim. Similarly, the names of the persons who were allegedly given employment after termination of the services of the workman have also not been mentioned.

15. In 1981 (42) FLR 381 referred to by the learned representative for the workman Hon'ble Delhi H.C. has observed:—

"It is now well established that the pleadings have to be specific. The plea, in the present case, that the juniors had been retained and the services of the senior workmen had been terminated was raised by the workmen. It was, therefore, for the workmen to lead evidence and prove the violation of provisions of Section 25-G."

16. In the present case, the workman has stated in his affidavit that junior persons to him were retained after termination of his services & new persons have been engaged. He has further stated as below:

मैं से जूनियर एवं नये व्यक्ति ऊपर, चेतावनी, पूर्ण मीना, विजेन्द्र मेरी सेवा मुक्ति के बाद भी काम कर रहे थे और काम पर लगाया था।

17. The workman has stated that the above persons were junior to him & it has also been stated that they were employed after his termination, therefore, the statement is very vague & contradictory. It is not clear amongst above named persons who were junior to him & who were given recruitment after his termination. Further, the names of above persons were not disclosed in the statement of claim & pleadings are not specific. The workman has not adduced any documentary evidence in support of his statement that junior persons were retained & new persons were given recruitment after his termination. Therefore, evidence adduced by the workman in this regard cannot be relied on.

18. For the foregoing reasons, the workman has failed to prove that junior persons to him were retained in the establishment in violation of provisions of section 25-G & new persons were given employment after termination of his services without any offer of re-employment in violation of section 25-H of the I.D. Act.

19. In view of above discussions, the workman has failed to prove that the action of the management in

terminating his services was in violation of section 25-F & 25-G of the I.D. Act. He has also failed to prove any violation of provisions of 25-H of the I.D. Act. Therefore, it is held that the action of the non-applicant was not illegal & unjustified. Resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

20. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का आ 820.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ड्रिलिंग (ड्रिलिंग) ज्योलेजिकल सर्वे ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 3/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 04032013 को प्राप्त हुआ था।

[सं एल-42012/48/2011-आई आर (डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 820.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the The Director (Drilling), Geological Survey of India and their workman, which was received by the Central Government on 04.03.2013.

[No. L-42012/48/2011-IR (DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL— CUM-LABOUR COURT, JAIPUR.

Sh. N.K. Purohit

Presiding Officer

I.D. 3/2012

**Reference No. L-42012/48/2010 [IR (DU)]
dated 23.11.2011**

Shri Harkesh
S/o Shri Hirans/Hairsh
R/o Village Kashirampura
Post-Gudla, Distt: Karoli (Raj.)
V/s

The Director (Drilling)
Geological Survey of India

Western Region, Jhalana Doongri,
Jaipur.

Present:

For the Applicant Union : Shri Kailash Chandra Kumbhakar.

For the Non-applicant : Ex-Party.

AWARD

31.1.2013

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of Geological Survey of India, Jaipur in terminating the services of Shri Harkesh, w.e.f. 16.9.2001 is legal and justified? What relief the workman is entitled to?"

2. The workman in his statement of claim has pleaded that he was employed as worker in the month of January, 2001 at the Geological Survey of India under the Director (Drilling), Western Region, Jhalana Doongri, Jaipur. He has further pleaded that his services were terminated by verbal order on 16.09.2001. Despite, he had continuously worked for more than 240 days, his services were terminated without any notice pay in lieu of notice or compensation. He has also pleaded that at the time of his termination junior to him were retained by the non-applicant and after his termination new hands were given recruitment. Thus, the non-applicant has violated the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act. He has prayed to declare his termination as illegal and unjust and has also prayed for his reinstatement with back wages and consequential benefits.

3. None appeared on behalf of the non-applicant despite service of registered notice. Therefore, order to proceed Ex-Parte against the non-applicant was passed on 14.08.2012.

4. The workman in support of his claim has submitted his affidavit and documents Ex-W1 to W6.

5. Heard the arguments of the learned representative on behalf of the workman and perused the relevant record.

6. Initial burden was on the workman to prove that he had in fact worked for 240 days during preceding 12 months from the date of his alleged termination *i.e.* 16.09.2001 and his termination was in violation of Sec. 25-F of the I.D. Act.

7. The workman in his affidavit has stated that he had worked for more than 240 days during the period of 1 year. In support of his statement he has produced photo-

copies of attendance register for the period 16.04.2001 to 15.09.2001. Attendance register Ex-W4 reveals that his actual working days during said period were as under:—

16.04.2001 to 15.05.2001	4 Days
16.05.2001 to 15.06.2001	31 Days
16.06.2001 to 15.07.2001	30 Days
16.07.2001 to 15.08.2001	31 Days
16.08.2001 to 15.09.2001	12 Days
Total:	108 Days

8. It is evident from the above working days shown in the attendance register Ex-W4 that the actual working days of the workman during preceding 12 months from the date of termination 16.09.2001 were 108 days only and he had not worked for more than 240 days. Since, the workman has failed to establish that he had worked for requisite period during preceding 12 months from the date of his termination, the non applicant was under no obligation to comply with the provisions under Section 25-F of the I.D. Act.

9. The learned representative on behalf of the workman has submitted that Section 25-G and 25-H are independent of Section 25-F of the I.D. Act and even if the workman could not be able to establish his case under Section 25-F of the I.D. Act, it is still open him to make out his case under Section 25-G and 25-H of the I.D. Act. He has also submitted that the non applicant has not appeared to contest the claim of the workman and Ex-parte proceedings have been drawn against the non applicant in absence of any evidence in rebuttal there is no reason to disbelieve the evidence of the workman. He has further submitted that on the basis of the evidence of the workman it has been established that action of the non-applicant was in violation of Section 25-G and 25-H of the I.D. Act. In support of his contention the learned representative has relied on JT 1996(7) SC 181, 1981(42)FLR 381(Delhi), 1987(55)FLR 527(Guj.), 1997(76)FLR 393(Allahabad).

10. I have given my thoughtful consideration to the above submissions.

11. In JT 1996(7) SC 181 Hon'ble Apex court has held that Chapter V-A providing for retrenchment is not enacted only for the benefit of the workman to whom section 25-F applies but for all cases of retrenchment.

12. Thus, it is not necessary that retrenchment must be covered by section 25-F so as to attract the applicability of Section 25-G & 25-H which are independent and distinct sections and provisions of above sections do not require that the workman should have been in continuous employment within the meaning of Section 25-B.

13. Therefore, even if, the workman has failed to establish that his termination was in violation of provisions

of section 25-F of the I.D. Act, the question survives for consideration is whether the non-applicant has violated the provisions of Section 25-G & H of the I.D. Act as alleged by the workman.

14. The name of the persons who were juniors to him and allegedly retained by the non-applicant have not been mentioned in the statement of claim. Similarly, the names of the persons who were allegedly given employment after termination of the services of the workman have also not been mentioned.

15. In 1981(42) FLR 381 referred to by the learned representative for the workman Hon'ble Delhi H.C. has observed:—

"It is now well established that the pleadings have to be specific. The plea, in the present case, that the juniors had been retained and the services of the senior workmen had been terminated was raised by the workmen. It was, therefore, for the workmen to lead evidence and prove the violation of provisions of Section 25-G"

16. In the present case, the workman has stated in his affidavit that junior persons to him were retained after termination of his services & new persons have been engaged. He has further stated as below:

मेरे से जूनियर एवं नये व्यक्ति ऊंकार, चेतराम, पूर्ण मीना, रामकेश मेरी सेवा मुक्ति के बाद भी काम कर रहे थे और काम पर लिया था।

17. The workman has stated that the above persons were junior to him & It has also been stated that they were employed after his termination, therefore, the statement is very vague & contradictory. It is not clear amongst above named persons who were junior to him & who were given recruitment after his termination. Further, the names of above persons were not disclosed in the statement of claim & pleadings are not specific. The workman has not adduced any documentary evidence in support of his statement that junior persons were retained & new persons were given recruitment after his termination. Therefore, evidence adduced by the workman in this regard cannot be relied on.

18. For the foregoing reasons, the workman has failed to prove that junior persons to him were retained in the establishment in violation of provisions of section 25-G & new persons were given employment after termination of his services without any offer of re-employment in violation of section 25-H of the I.D. Act.

19. In view of above discussions, the workman has failed to prove that the action of the management in terminating his services was in violation of section 25-F & 25-G of the I.D. Act. He has also failed to prove any violation of provisions of 25-H of the I.D. Act. Therefore, it is held that the action of the non-applicant was not illegal & unjustified. Resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

20. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का अ 821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एक्यूटिव आफेसर, भारती एअरटेल सर्विसेस लि के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध ने निर्दिष्ट औद्योगिक विवाद में

प्रेस्सफोन अधिकारी

2012) के केन्द्रीय संस्कार

प्रकाशित करती है जो केन्द्रीय सरकार को 08032013 को प्रस्तुत हुआ था।

[सं एल-40012/12/2011आईआर(डीयू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 821.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2012) of the Central Government Industrial Tribunal cum Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the The Executive officer, Bharti Airtel Services Ltd. New Delhi and their workman, which was received by the Central Government on 08.03.2013.

[No. L-40012/102/2011-IR(DU)]

JOHAN TOPNO, Under Sec.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, JAIPUR

Presiding Officer

SH. N.K. Purohit

I.D. 23/2012

Reference No. L-40012/102/2011 [IR(DU)]
dated: 13.1.2012

Sh. Mukesh Sharma
S/o Shri C.M. Sharma
House No. 2770, Bagru Ka Rasta,
Chandpole Bazar, Jaipur.
& 9 others (S/Shri Ganshyam, Ajay, Satyanarayan,
Krishna Kumar, Ashok Sharma, Shyam/Singh, Amit
Kumawat, Devendra Singh & Manoj Khandelwal).

Vs.

Chief Executive Officer
Bharti Airtel Services Ltd.
Corporate Centra,
Neelgagan Mandi, Sultanpur,
New Delhi : 110 030.

Present:

For the Applicants : Sh. Ashok Verma

For the Non-applicant : Ex-party.

AWARD

8.2.2013

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of management of M/s Bharti Airtel Services Ltd. New Delhi to terminate the services of Shri Mukesh Sharma & 9 others (S/Shri Ganshyam, Ajay, Satyanarayan, Krishna Kumar, Ashok Sharma, Shyam/Singh, Amit Kumawat, Devendra Singh & Manoj Khandelwal) without following the provisions of Section 25-F of the I.D. Act, 1947, is fair, legal and justified? What relief they are entitled to?"

2. The applicants in their claim statement have pleaded that Non-applicant M/s Bharti Airtel Services Ltd., New Delhi is a registered company & is an industry within the meaning of Section 2(s) of the I.D. Act. with reference to their applications & subsequent interview the applicants were duly appointed on permanent post of Sales Officer. It has been pleaded that initially the applicants were appointed on probation for a period of 6 months & after completion of probation period all of them were confirmed & posted on permanent post. As per terms & conditions given in the letter of appointment, their age of retirement was 58 years & their services were transferable all over the India. It has further been pleaded that the applicants were required to perform the work as per instruction of their superiors at Jaipur. It has also been pleaded that the workmen had worked for more than 240 days but their services have been terminated in violation of section 25-F of the I.D. Act without any notice pay in lieu of notice or compensation.

3. As regards, applicant No. (1) & (8), it has been pleaded that by adopting unfair labour practices they were compelled to sign their resignation letter on 20.4.11. The resignation was effected w.e.f. 29.4.11 but prior to that the resignation were withdrawn by them on 25.4.11. It has been alleged that their services have been terminated illegally w.e.f. 29.4.11 & services of the applicant No. 2 to 7 & 9 were also terminated on 2.5.11 without paying any retrenchment compensation or notice. Thus, the termination of the applicants were in violation of Section 25-F of the I.D. Act. It has further been pleaded that no seniority list was prepared & at the time of their termination junior persons to them were retained in the job in violation of Section 25-G & fresh hands were employed in violation of Section 25-H of the I.D. Act. Therefore, the termination be declared illegal & the applicants be reinstated with back wages & other consequential benefits.

4. It is pertinent to mention that none appeared on behalf of the non-applicant despite services of registered

notice, therefore, Ex-party proceedings were drawn against the non-applicant.

5. In evidence, all the applicants have filed their respective affidavits & documents in support of their claims.

6. Heard the learned representative on behalf of the applicants & perused the relevant record.

7. The initial burden was on the applicants to show that they had worked for more than 240 days during preceding 12 months from the respective date of their termination & their termination was in violation of the provisions of the Section 25-F of the I.D. Act.

8. Learned representative on behalf of the applicants submits that the averments made in the statement of claim have been duly proved by the applicants by documentary evidence as well as affidavits of each individual applicant. The non applicant company is an 'industry' within the purview of I.D. Act. The applicants were duly appointed for discharging the duties of sale at Jaipur under the supervision and control of the Manager of the local unit. The applicants were initially appointed on probation. Thereafter, on completion of probation period they were given posting against the permanent post and subsequently their services were confirmed. He further submits that despite the applicants had worked for more than 240 days

during preceding 12 months from the date of their termination, their services have been terminated in violation of Section 25-F of the I.D. Act. He also submits that applicant No. 1 and 8 were compelled to submit their resignation on 24.04.11. Their resignations were effective *w.e.f.* 29.04.11 but the same had been withdrawn by them prior to said date. Therefore, their termination was also in violation of Section 25-F of the I.D. Act. In support of his contention the ID. representative on behalf of the applicants has relied on 1998 ILLJ 1084.

9. I have given my thoughtful consideration on the above submissions.

10. The applicants have submitted their affidavit in support of their claim. Except facts regarding resignation & withdrawal of resignation by the applicants No. 1 & 8, remaining facts mentioned in their affidavits are almost identical. The applicants have submitted the copies of their appointment letter, confirmation letter, pay slips in support of their statement. Applicant No. 1 and 8 have also produced copies of letters regarding withdrawal of their resignation. As per respective statements of the applicant in their affidavits and documentary evidence on record their date of initial appointment, designation, date of confirmation, last drawn salary and alleged date of termination are as below:—

S. No.	Name of Petitioner	Before Confirmation		After Confirmation		Last drawn Salary	Date of termination
		Date of Initial Appointment	Designation	Date of Confirmation	Designation after Confirmation		
1.	Mukesh Sharma	12.10.07	Sales Officer	12.04.08	Sr. Officer/ S-2	4933/- pm	29.04.11
2.	Ghanshyam Mahendvarya	1.03.07	Officer Sales (S-1 Level)	1.09.07	Officer (S-1)	7033/- pm	2.5.11
3.	Ajay Kr. Jha	1.03.07	Sales Officer	12.04.08	Officer	5033/- pm	2.5.11
4.	Satya Narayan Sain	22.01.08	Sales Officer	20.07.08	Officer (S-1 Level)	4533/- pm	2.5.11
5.	Krishan Kumar	22.01.08	Sales Officer	22.07.08	Sales Officer	4367/- pm	2.5.11
6.	Ashok Kr. Sharma	17.07.07	Sr. Officer Sales/S-2	17.07.08	Sr. Officer Sales/S-2	5367/- pm	2.5.11
7.	Shyam Singh	30.06.08	Officer Sales (S-1 Level)	30.12.08	Officer Sales (S-1 Level)	4433/- pm	2.5.11
8.	Amit Kumawat	4.07.08	Officer Sales (S-1 Level)	3.01.09	Officer Sales (S-1 Level)	4433/- pm	29.4.11
9.	Devendra Singh Shekhawat	12.09.08	Sr. Officer Sales/S-2	12.03.09	Sr. Officer Sales/S-2	6667/- pm	2.5.11

11. Upon perusal of the documents brought on record by the applicants it reveals that on the basis of interview, they were given appointment by the non applicant as Sales Officers. The terms and conditions of the appointment have been mentioned in their respective appointment letters. Initially they were on probation for a period of 6 months. It further reveals that their services were confirmed after completion of probation period. As per clause 5 of appointment letter initial place of posting was to be given at any location within Jaipur. However, they were liable to be transferred or deputed from one place to another anywhere in India or abroad and/or from one department to another or from one establishment to another. As per Clause 4.5 in the event of absence from work prior written intimation of such absence was to be given to their supervisor, & according to Clause 6 operational instructions/procedures as contained in the company's guidelines or other administrative instructions issued by the management from time to time were to be abided & carried out. As per Clause 6.3 the work product was to be generated by them while performing the services during the term of their employment, including all electronic data, papers, worksheets, logs, records, reports, documents, training material etc.

12. It is evident that the applicants were appointed as Sales Officers. It is implied that their job was to bring the products of the company within the consumers reach. They were not performing any supervisory work of managerial work. Therefore, the applicants were 'workman' as defined in Section 2-(s) of the I.D. Act.

13. It is also evident from the appointment letters, confirmation letters and salary slips of the applicants that they were duly appointed employees of the non applicant and employer employee relation existed between the non applicant and the applicant.

14. From the respective appointment letters and pay slips it reveals that during preceding 12 months from the respective date of their termination as mentioned in the chart, the applicants had worked for more than 240 days. The copies of the letters of the applicants No. 1 Mukesh & No. 8 Anil also reveal that they had withdrawn their resignation before the effective date of their resignation. Therefore, the statements of the applicants find support from the above documents. The applicants have alleged that prior to their termination no notice or pay in lieu of notice or compensation was given to them, therefore, their termination was in violation of Section 25-F of the I.D. Act.

15. The non applicant has not appeared to contest the case & ex-party proceedings have been drawn against

the non applicant as such there is no cross examination on the affidavit submitted by the applicants. In absence of any reply to the claim statement & evidence in rebuttal, there is no reason to disbelieve the testimony of the applicants supported by documentary evidence.

16. From the affidavit and documentary evidence brought on record it is established that the applicants were employees of the non applicant and they were workmen within the definition of 'Workman' under Section 2-s of the I.D. Act. It is also established that the workmen had worked for more than 240 days during preceding 12 months from the date of their termination and their services were terminated without any notice pay in lieu of notice or compensation. Thus, their termination was in violation of Section 25-F of the I.D. Act.

17. Now, the questions survive for consideration are whether junior persons to the applicants were in the job at the time of termination of the services of the applicants in violation of section 25-G of the I.D. Act & fresh hands were given employment after termination of the services of the applicants in violation of section 25-H of the I.D. Act.

18. In statement of claim neither the names of the persons allegedly junior to the applicants have been mentioned nor the names of the persons allegedly given employment after termination of the services of the applicants have been disclosed. The applicants in their affidavits have disclosed certain names in this regard but there is no documentary evidence in support of their statements. The applicant Sh. Ghanshyam has stated that Sh. Manoj Khandelwal was junior to him & he has also stated that Sh. Manoj Khandelwal was employed after termination of his services. Applicant Ajay Kumar has stated that after terminating his services Sh. Vikram Sharma & Sh. Ratandeep were employed whereas other applicants have stated that after termination of their services Sh. Kuldeep & Sh. Vikram Sharma were given employment, therefore, there are contradictions in respect of the persons allegedly given employment after termination of the services of the applicants. Further, the applicants in their affidavits have not stated when the persons junior to them were appointed & when new persons were given employment. For the foregoing reasons the evidences of the applicants in this regard are not reliable. Thus, the applicants have failed to establish that the action of the management was in violation of section 25-G&25-H of the I.D. Act.

19. But it has already been concluded that the services of the applicants were terminated without complying with the mandatory provisions of section 25-F of the I.D. Act, therefore, the said action of the non-applicant in terminating

the services of the applicants being in violation of the provisions of section 25-F of the I.D.Act is illegal & unjustified.

20. Having regards to the nature of job, period of service & facts that after completing probation period the services of the applicants were confirmed, the applicants are entitled for their reinstatement in service. In view of the entire facts & circumstances of the instant case, the interest of justice would be sub served by reinstatement of the applicants with 25% back wages.

21. In the result, the reference under adjudication is answered in favour of the applicants & it is held that the action of the Non-applicants in terminating the services of the applicants without complying with the mandatory provisions of section 25-F of the I.D.Act is illegal & unjustified. Resultantly, the applicants are entitled to be reinstated with 25% back wages. The reference is answered accordingly.

22. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली 11 मार्च, 2013

कांग्रेस 822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धरा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जरनल मैनेजर, कोयम्बटूर स्पिनिंग एण्ड वीविंग मिल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध ने निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चैन्सी के पंचाट संदर्भ चैन्सी के पंचाट संदर्भ संख्या 41/2012 को प्रकाशित करती है, जो, केन्द्रीय सरकार को 08/03/2013 को प्राप्त हुआ था।

[सं. एल-42011/05/2012-आई आर (डी यू)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th March, 2013

S.O. 822.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2012) of the Central Government Industrial Tribunal cum Labour Court Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to the General Manager, Coimbatore Spinning and Weaving Mills and their workman, which was received by the Central Government on 08.03.2013.

[No. L-42011/05/2012-IR(DU)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

CHENNAI

Wednesday, the 13th February, 2013

Present:

A.N. JANARDANAN
Presiding Officer

INDUSTRIAL DISPUTE No. 41/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of NTC Mill and their Workmen)

BETWEEN

1. The General Secretary : 1st Party Petitioner Union
Coimbatore District Mill
Labours Union (CITU)
Anupparpalayam, Kattoor,
Coimbatore
2. The General Secretary : 2nd Party Petitioner Union
Kovai Mandala
Panchalai Thozhilalar
Sangam (NDLF),
32 Perumal Kovil Veedhi
Vilakurichi, Coimbatore
3. The Asstt. General Secretary : 3rd Party Petitioner Union
Desiya Panchalai
Thozhilalar Sangam
(INTUC), 1848 Trichy Road
Ramanathapuram, Coimbatore
4. The General Secretary : 4th Party Petitioner Union
Kovai Periyar Mavatta
Dravida Panchalai
Thozhilalar Munnetra
Sangam (LPF)
162, Pankaja Mills
Quarters Pankaja
Mill Road, Coimbatore.

Vs.

The Chief : 2nd Party/Respondent
 General Manager
 Coimbatore Spinning and
 Weaving Mills
 Krishnaswamy Mudaliar Road
 Post Box No. 24, Coimbatore.

Appearances:

For the 1st Party : M/s S. Senthil Nathan,
 Petitioner Union Advocates
 For the 1st Party : Petitioners Default to
 Petitioner Union 2 to 4 Appear
 For the 2nd Party/ : M/s T.S. Gopalan & Co.,
 Management Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-42011/05/2012-IR(DU) dated 06.07.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of NTC Mill Management, Southern Region, Coimbatore not resuming 3 shifts in Coimbatore Spinning and Weaving Mills on par with their union of NTC Mills is justified? If not, to what relief the workmen are entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 41/2012 and issued notices to both sides. Respondent appeared through advocate and of 4 petitioners, First Petitioner, constituting First Party Petitioners, 4 in number only appeared through Advocate who filed Vakalat. Petitioners 2 to 4 constituting the first Party with 1st Petitioner did not appear at all dispute having been served with notice. In spite of several adjournments numbering as good as 14 they did not appear except by way of debut of the First Petitioner-First Party on 24.09.2012. Thereafter the First Petitioner-First Party also remained consecutively and consistently absent. Petitioners 2 to 4, therefore had been called absent and set *ex parte*. Thereafter First Petitioner has also been called absent and set *ex parte*. Respondent has been present or representing the case consistently throughout. When the matter stood posted from time to time for further steps and lately on today *i.e.* 13.02.2013 for further proceeding, also petitioners were absent nor represented.

3. In spite of several adjournments the petitioners in the dispute did not turn up or let in any evidence in support of their case for answering the reference. Needless to say it is upon the petitioners to substantiate their case that not considering the demands of the Petitioner Unions in respect of not resuming three shifts in Coimbatore Spinning and Weaving Mills on par with their unit of NTC Mills is not justifiable. When they wish the Court to be satisfied and made believe that it is so it is for them to discharge that burden which has not been done. The inevitable conclusion in the absence of any evidence to the contra is that there is resuming of three shifts in Coimbatore Spinning and Weaving Mills on par with their unit of NTC Mills and if not resumed the same is only justified. Therefore the workmen are not entitled to any relief.

4. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 13th January, 2013)

A.N. JANARADANAN, Presiding Officer

Witnesses Examined:

For the 1st Party Petitioner Union : None
 For the 1st Party Petitioner Union 2 to 4 : None
 For the 2nd Party/1st Management : None

Documents Marked:

On the Petitioner's side

Ex. No.	Date	Description
		N/A

On the Management's side

Ex. No.	Date	Description
		N/A

नई दिल्ली, 11 मार्च, 2013

कानून 823—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसेल के पंचाट (संदर्भ संख्या 25/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं. एल-22012/181/1997-आईआर(सी-II)]
 बी. एम. पट्टायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 823.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of ECL their workman, which was received by the Central Government on 11/03/2013.

[No. L-22011/181/1997-IR(C-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 25 OF 1998

Parties : The management of Mohanpur Colliery,
M/s. ECL, Burdwan (WB)

Vs.

The Vice President, CMSI (CITU),
Raniganj (W.B.)

Representatives:

For the management : None

For the union (Workman) : None

INDUSTRY COAL : STATE: WEST BENGAL

Dated-13.02.13

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/181/97-I.R.(C-II) dated 16.07.98 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Mohanpur Colliery of M/s. ECL awarding punishment to Sh. Nirmal Ch. Gorai, Dumper Operator, by way of demotion to Drill helper Category 'E' after domestic enquiry when the criminal case is also pending for the same charges, and also of non payment of suspension allowance, is justifiable? If not, to what relief is the concerned workman entitled?"

Having received the Order of Letter No.L-22012/181/97-I, I.R.(C-II) dated 16.07.98 of the above said reference

from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 25 of 1998 was registered on 10.08.1998 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the Union is neither appearing nor taking any step since 2006 despite registered notices. Several opportunities were given but of no effect. It seems that the workman is now no more interested to proceed with the case further. The case is also too old-1998. Since the Union does not want to proceed with the case further, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का अ 824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू सी एल के प्रबंधनत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 106/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं एल-22012/114/2002-आई आर (सी एम-II)]

बीएमपटनायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 106/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Wani North Area of Western Coalfields Limited, Rajur Sub Area (Wani North Area) of W.C.L. and their workmen, received by the Central Government on 11/03/2013.

[No. L-22012/114/2002-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT NAGPUR

Case No. CGIT/NGP/106/2003 Date: 21.02.2013.

Party No. 1 : The General Manager,
Wani North Area of Western Coalfields
Limited, Post. Ukni, Tah. Wani,
Distt. Yavatmal (MS)

: The Sub Area Manager,
Rajur Sub Area (Wani North Area) of
WCL
Post: Ukni, Tah. Wani, Distt. Yavatmal

Versus

Party No. 2 : Sh. J.N. Pandey, General Secretary,
Koyla Shramik Sabha (HMS), WNA
Tilak Nagar, Wani, Post & Tah. Wani,
Distt. Yavatmal (MS).

AWARD

Dated: 21st February, 2013

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Bhagwan Pudke, for adjudication, as per letter No. L-22012/114/2002-IR (CM-II) dated 05.03.2003, with the following schedule:—

"Whether the action of the management in relation to Rajur Sub Area of Wani North Area of Western Coalfields Ltd. in not protecting the pay of Sh. Bhagwan Shankar Pudke, consequent upon its conversion from Loader to General mazdoor is legal & justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Bhagwan Pudke, ('the workman" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that he is working as a fitter in Endom Section at Kollar-Pipri open cast mine, Wani and initially he was appointed as a loader in the year 1975 and continued to work an underground loader with unblemished service record and in the year, 1982, he fell ill and suffered from acute pain in his stomach and it was detected that he was suffering from Portal hypertension and he was admitted to medical college hospital on 24.07.1982 and was discharged on 04.08.1982 and after his discharge from the hospital, as per medical advice, he was given surface job as a chowkidar

for a period of about six months and his basic salary was protected and thereafter, he was again sent to underground mine and he worked in the underground till 1993 and in 1993, he again fell ill and it was diagnosed of his suffering from serious problems of stomach and he was referred to KEM hospital, Bombay and in that hospital he was under treatment for about one month and as per the advice of the doctors of KEM hospital to give him light duties, party no. 1 gave him surface duty as a general mazdoor and as the change of the nature of his duty was on medical advice, it was incumbent on the party no. 1 to protect his basic salary of the loader, which was about Rs. 128/- per day, but instead of protecting his basic salary, party no. 1 fixed his basic salary of Rs. 70-80/- per day and therefore, there was loss of Rs. 3000/- to Rs. 4000/- per month and in August, 1999, he was transferred to Junad Open cast project and at Junad open cast project also, he was given surface job, but his basic pay was not protected and though he made several representations to party no. 1, he could not get any positive relief, so he raised the dispute before the conciliation officer and during the conciliation, the party no. 1 took the plea that as he was given surface job on his own request, he was not entitled to pay protection, so the conciliation failed and matter was referred to the Tribunal for adjudication and there has been a settlement with the union that if the nature of job is changed on administrative grounds, the pay should be protected and this settlement has acquired the nature of service condition and he was sent to KEM hospital for treatment on the recommendation of the medical officer of party no. 1 and he was given surface job on medical advice and till now, he is doing surface job, but he was not given pay protection and it is learnt by him that other persons, who have been given surface job on administrative grounds, their pay has been protected and as such, he is entitled for protection of his basic pay and by not protecting his basic pay, party no. 1 have indulged into illegal, unlawful and unfair labour practice and violated the service conditions and such action is not justified and as such, he is entitled for protection of his basic pay and to receive the arrear wages from 1993.

3. In the written statement, the party no. 1 have pleaded *inter-alia* that the industrial dispute has been raised by the union, K.S.S. (HMS) and the General Secretary of the union is the party to the reference and not the individual workman and as such, the individual workman has no locus standi/legal entity in the matter of filing of the statement of claim and therefore, the statement of claim, which has been signed and filed by the workman in his individual capacity has no legal and valid status in the eyes of law and the same does not deserve to be given consideration and is liable to be rejected and the terms of reference made by the government are vague and general and it does not specify the date and year of alleged conversion and non-protection of pay. The further case of the party no. 1 is that according to the claim of the

workman, the alleged cause of action arose in 1993, but the dispute was raised by the union before the ALC in 2001, which is highly belated and such a belated reference is not maintainable in the eyes of law and the workman was converted to time rated from piece rated worker in 1993 and he was receiving the wages of time rated worker without any protest or objection, it is to be presumed that the conversion was right and justified and had been accepted by the workman and after a gap of nearly 8/10 years, he cannot claim that it was unjust and unfair and in fact, in such a situation, the principle of estoppels operates and the workman is estopped from making a claim for protection of piece rated wages of a job, which he was not performing for such a long time. It is further pleaded by the party no. 1 that the workman had fallen ill due to natural causes in the year 1992 and for his such ailment, he was given all medical treatments including referral to outside hospitals from time to time and due to this reason, he was not in a position to work as a loader and therefore, on the request of the workman and medical recommendation, he had been provided category-I job from time to time and he was provided light job in category-I for six days from 07.04.1992 to 12.04.1992, with the condition that during the said period, he would be paid wages of category-I and after expiry of the said six days, he would be reverted back to his original job of loader and again, he was provided light job for six days in Cat.-I *vide* office order dated 26.04.1993 specifically mentioning there in that he would not be entitled to group wages and provided light job in cat.-I for 15 days from 20.10.1994 to 07.11.1994 *vide* office order dated 19.10.1994 and allowed light job for six months from 29.12.1994 to 28.06.1995 *vide* office order dated 28/29.12.1994 and during the period from 29.12.1994 to 28.06.1995, he was deployed in cat.-I and paid wages accordingly and after expiry of the six months of light duty on 28.06.1995, the workman did not report for further duty either as a loader or cat.-I mazdoor, but however, he represented *vide* his application dated 01.07.1995 to allow him to continue to perform light duty on medical advice, so he was allowed light duty in cat.-I, till he was permanently regularized as cat.-I mazdoor *vide* office order dated 12.01.1998 retrospectively *w.e.f.* 01.01.1997 alongwith others and on his regularisation in cat.-I his wages was fixed at the mid point of wage scale of cat.-I *w.e.f.* 01.01.1997 according to the prevailing norms, rules and agreement and the reason of the change over of the workman from piece rated to time rated was purely on his own request and on the basis of medical advice and such change cannot be attributed to the management and the workman is not entitled to any relief.

4. In support of his claim, the workman has examined himself as a witness. The evidence of the workman is on affidavit. In his evidence, the workman has reiterated the facts mentioned in the statement of claim. However, contradicting his own evidence given in the examination-

in-chief and presented in the statement of claim, in his cross-examination, the workman has stated that he sustained injury in the coal mine, while working underground and thereafter, he was entrusted the work of general mazdoor on surface on the ground of sustaining injury. The workman has admitted the suggestions given to him that he was declared unfit by the doctor to work as a loader and that after he was declared unfit to work as a loader, management of WCL gave him work on surface as a General mazdoor and the management had given a written order for the same. The workman has also admitted that he had not given any representation to the management to protect his basic pay of a loader, when management gave his wages of General Mazdoor cat.-I in time rate.

5. One Chandra Shekhar Khond has been examined as a witness by party no. 1. In his examination-in-chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement. It is to be mentioned here that the evidence of the witness for the management remained unchallenged as neither the workman nor his advocate appeared to cross-examine the said witness.

It is also necessary to be mentioned here that the case was fixed to 22.01.2012 for hearing of argument on merit of the case and as neither the workman nor anybody else appeared on his behalf, orders was passed to proceed exparte against the workman.

6. At the time of argument, it was submitted by the learned advocate for the party no. 1 that the statement of claim has been filed by the workman in his individual capacity, even though the dispute was raised by the union, "Koyla Shramik Sabha" and he has not filed any authority from the union for the same and as such, the statement of claim is *void ab-initio* and liable to be rejected. It was also submitted by the learned advocate for the party no. 1 that the terms of reference is general and vague, as no date of year of the alleged conversion of the workman from piece rate to time rate and non-protection of pay have been mentioned and such vague reference is deserved to be struck down and according to the statement of claim, the alleged grievance had arisen in the year 1993, but the dispute was raised in the year 201 and there was inordinate delay in raising the dispute and no plausible reason has assigned for such delay and for that the claim of the workman is required to be turned down. It is further submitted by the learned advocate for the party no. 1 that the workman had deployed in time rated job due to his poor health and on his request and paid wages of time rate and subsequently regularized in time rate and at no stage, he made any protest, which has been admitted by the workman in the cross-examination and as the workman accepted the wage of time rate and his conversion without any protest, he is stopped to raise the question under the principles of estoppels.

The further submission made by the learned advocate for the party no. 1 was that it is clear from the evidence on

record including the documents that on medical advice and on the own request of the workman, the workman was deployed in light job in time rate and in the document, annexure 'B' it was specifically mentioned that he was being allowed to work in time rate as per his own request and the said fact has been further fortified by the document, annexure-G, the application of the workman dated 01.07.1995 and as such, giving him wage protection of a loader does not arise and though the workman in paragraph 5 of the statement of claim has mentioned about a settlement, copy of such settlement has not filed and there was never any settlement between the party no. 1 and Koyla Shramit Sabha, the disputant union on this issue and there was a conciliation settlement dated 02.11.1992 modified settlement dated 31.10.1995 with R.K.K.M.S. union and according to para 1.1 of the settlement dated 02.11.1992, it was agreed that management shall provide alternate/ligher job to employees particularly loaders, who are physically weak due to their old age, sickness or I.O.D. irrespective of vacancies and no provision has been made for protection of wages in such events and clause 1.3 of the settlement provides for protection of group wages of loaders, who are converted to time rate in the event of filling up of 50% of the sanctioned vacancies in accordance with the man power budget from amongst the loaders, who have completed 15 years of service and the case of the workman does not cover by clause 1.3 of the said settlement and as per the modified settlement dated 31.10.1995, it was agreed that all such piece rated workers, who have given option or may give option for time rated job, their pay will be fixed at the midpoint of commensurating category and as the workman had opted for time rated job, he is not entitled for protection of group wage even under the said clause also and as such, the workman is not entitled to any relief.

7. On perusal of the materials on record, it is found that there is force in the contentions raised by the learned advocate for the party no. 1. It is found that due to his illness and doctor's advice, the workman requested party no. 1 for alternative job on surface and accordingly, party no. 1 gave the workman alternative job on surface from time to time. It is also found from record that while giving order for alternative job, it was specifically mentioned in the orders that the workman would be entitled to get the wages of General Mazdoor cat.-I and he would be not entitled to group wages and accepting the conditions, the workman performed alternate job on surface. It is also found that the workman did not raise any objection regarding payment of wages of General Mazdoor cat.-I to him till 2001. It is also found that the workman is not entitled for protection of his group wages as per the settlement dated 02.11.1992 as entered between the party no. 1 and R.K.K.M.S. Union. Therefore, the workman is not entitled to any relief. Hence, it is ordered:—

ORDER

The action of the management in relation to Rajur Sub Area of Wani North Area of Western Coalfields Ltd. in not protecting the pay of Sh. Bhagwan Shankar Pudke, consequent upon its conversion from Loader to General Mazdoor is legal & justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 825.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की अधा 17 के अनुसार में केन्द्रीय सरकार ई सीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संलग्न संख्या 17/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं. एल-22012/28/1996-आई आर (सी-II)]

बी. एम. पट्टायक, डेस्क अधिकारी

New Delhi, The 11th March, 2013

S.O. 825.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL their workman, which was received by the Central Government on 11/03/2013.

[No. L-22012/28/1996-IR(C-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen,

Presiding Officer

REFERENCE NO. 17 OF 1997

Parties: The management of MIC Jhanjra Project., M/s. ECL, Raniganj (WB)

Vs.

The Lt. Gen. Secy., CMU, Ukhra (W.B.)

Representatives:

For the Management: None

For the Union (Workman): None

INDUSTRY: COAL STATE: WEST BENGAL

Dated: 12.02.2013

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/28/96-I.R.(C-II) dated 10.03.1997 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of MIC Jhanjra Project of M/s. ECL in denying promotion to Technical Grade 'B' w.e.f. 01.08.93 to S/Sh. Molla Asanulla, Lal Mohan Singh and Ambika Singh is legal and just? If not, to what relief is the concerned workmen entitled?"

Having received the Order of Letter No. L-22012/28/96-I.R.(C-II) dated 10.03.1997 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 17 of 1997 was registered on 26.03.1997 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to the file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the workman is neither appearing nor taking any step since 2009 despite registered notices. It seems that the workman is now no more interested to proceed with the case further. The case is also too old — 1997. As such, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

Sd-

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

क्र. अ ४२६ .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार

डब्ल्यू. सी. एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 129/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 11032013 को प्रत हुआ था।

[सं. एल-22012/301/2001-आई आर (सी एम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, 11th March, 2013

S.O. 826.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award Ref. 129/2002 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure in the Industrial Dispute between the management of Ballarpur Area of Western Coalfields Limited, and their workmen, received by the Central Government on 11.03.2013.

[No. L-22012/301/2001-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/129/2002

Date: 22.02.2013

Party No. 1: The Chief General Manager,
Ballarpur Area of WCL,
P.O. Gauri, Tah-Rajura,
Distt. Chandrapur (MS).

V/s

Party No. 2: Shri Mohan Vairaiyya Darla
R/o. Gauri Colliery Qrt. No.
176, PO: Gauri, Tah-Rajura,
Distt. Chandrapur (MS).

AWARD

Dated: 22nd February, 2013

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Mohan Darla, for adjudication as per letter No. L-22012/301/2001-IR (CM-II) dated 25.07.2002, with the following schedule:—

"Whether the action of the management of Gauri Sub Area (Ballarpur Area) of WCL in dismissing Shri Mohan S/o. Viraiah Darla, Clerk Grade-II at Pouni Open Cast Mine of Western Coalfields Limited from service vide Order No. WCL/BA/GSA.PER/ Dismissed/2001/232 dated 28.3.2001 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Mohan Darla, ("the workman" in short) filed the statement of claim and the management of WCL ("party No. 1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he was working at Pouni Open Cast Mine of Gauri Sub Area, as a clerk grade II, before his dismissal and he had put eighteen years of long, unblemished and sincere service without any stigma and on 08.06.2000, he was charge sheeted for commission of the alleged misconduct as per articles 26.1, 26.13 and 26.22, which pertain to cheating and dishonesty with the property of the employer and commission of forgery of records and thereby causing loss to the management and he submitted his explanation and denied the charges leveled against him, but party No. 1 passed orders to hold a departmental enquiry against him, and the departmental enquiry was conducted by Mr. C.B. Singh and after completion of the enquiry, the enquiry officer submitted his report to the disciplinary authority and the disciplinary authority imposed the punishment of dismissal from services against him, *vide* order dated 28.03.2001 and though he preferred an appeal against the said order, he has not received any communication as to the result of the said appeal. The further case of the workman is that the enquiry was conducted in extreme haste, without giving him full and complete opportunity and material irregularities were committed by the enquiry officer during the enquiry and the findings given by the enquiry officer are highly perverse and erroneous and he was sent to personnel office as a clerk, as per the order of the personnel manager, Gauri Sub Area, *vide* order dated 24/28.08.1993 and there was no evidence on record of the enquiry to conclude that he was working as CMPF clerk at the relevant time and place and the enquiry officer did not properly and correctly appreciate the position during the course of the enquiry and abruptly concluded about his working as a CMPF clerk and there was no order of his appointment or posting as a CMPF clerk and by order dated 23.01.1993, he was appointed in R.C. and as such, no charge of any nature can be attached to him nor he was involved in any such charge. It is also pleaded by the workman that even though he pressed hard for production of the vv and yy forms prepared manually of the year 1993-94 and 1996, such documents were not produced and due to non-production of such documents,

it was not possible to cross-examine the witnesses effectively and to bring the real facts on record and during the enquiry, it came on record that four to five persons were working in the CMPF office for the purpose of filling up the vv and yy forms manually and he had not prepared the form, annexure 'B' and annexure 'A' produced on record was a document prepared manually and it did not come in evidence that the said document was prepared by him and the said document was in the handwriting and signature of Shri Subhash Pimpalkar and Shri V.L. Mangulkar, clerks, who were appointed for that purpose and the vv statement did not bear his counter signature or the same was not in his handwriting and from the years 1993 to 1996, filling up of the vv and yy forms was being done manually and therefore, the enquiry officer came to a wrong conclusion in that respect and he had requested the enquiry officer to call the 11 persons, who were working in CMPF office and were responsible for preparation of the vv and yy forms, as witnesses on his behalf, as it was not possible for him to call them personally to adduce their evidence and those witnesses were afraid of to enter into the witness box and the enquiry officer did not make bonafide attempts to procure the attendance of those witnesses with a bias mind to support the management and witness Shri V.G. Ganar for the management admitted in his evidence that the vv and yy forms do not bear his (workman) signatures and the enquiry officer failed to appreciate the evidence of Shri Ganar properly and the enquiry officer wrongly held that production of witnesses was his duty and the charge has not been proved against him beyond reasonable doubts and there was no evidence on record showing his involvement in commission of the alleged misconduct and management did not lodge any complaint with the police against him, even though the alleged charges leveled against him were in the nature of a criminal offence and such action of the management shows that they were afraid of taking any penal action against him, due to want of cogent proof. The workman has prayed to set aside the order of dismissal from services passed against him and to reinstate him in service with continuity and full back wages.

3. The party No. 1 in their written statement have pleaded *inter-alia* that the workman was initially appointed on 18.10.1982 and he was transferred from Dhoptala OCM to Gauri OCM No. 1 *w.e.f.* 14.10.1992 and from Gauri OCM, he was transferred to Pouni OCM *w.e.f.* 07.06.1998 and he worked as CMPF clerk at Gauri OCM-I for the period from 14.10.1992 to 06.06.1998 and various statutory forms, such as form yy and form vv etc. are required to be prepared and submitted to the concerned CMPF Commissioner in respect of PF accounts and the clerks are responsible for all work relating to CMPF and frequent complaints were being made by the employees as well as office bearers of the Trade Unions, regarding discrepancies in CMPF accounts, so the management decided to conduct test verification of statutory record yy

and vv to ascertain the correctness of the remittance of CMPF and CMPF contribution made against CMPF account number A/7/40/1162 of the workman for the period from March 1993 to March 1998 and the yy and vv forms were verified and on verification, it was found that a sum of Rs. 1544/- and a sum of Rs. 4000/- was shown in excess in his CMPF contributions in the vv statements for the period March 1994 and March 1996 respectively and as the workman committed gross misconduct, he was issued with the charge sheet dated 08.06.2000, under the provisions of the Standing Orders and the workman submitted his reply and as the reply was found to be unsatisfactory, it was decided to conduct a departmental enquiry and Shri C.B. Singh was appointed as the enquiry officer and the enquiry was conducted legally, properly and following the principles of natural justice and after completion of the enquiry, the enquiry officer submitted his report to the competent authority and the workman had fully participated in the enquiry and he was also availed the service of a co-worker and he was supplied with copies of the documents, on which reliance was placed by the management to prove the misconduct levelled against him and the workman was also granted opportunity to cross-examine the management witnesses as well as to lead evidence in his defence and a copy of the enquiry report was sent to him *vide* letter dated 18.03.2001 by registered post and as the charges levelled against the workman were very serious, the competent authority imposed the punishment of dismissal from services *w.e.f.* 29.03.2001, as per order dated 28.03.2001 and the workman preferred an appeal dated 12.04.2001, against the said order and the appellate authority dismissed the appeal of the workman, finding the same to be devoid of any merit and the decision of the appellate authority was intimated to the representative of the union *vide* Order No. 4804 dated 08.09.2001. It is further pleaded by the Party No. 1 that the documentary evidence proves that the workman worked as CMPF clerk for the period from 14.10.1992 to 06.06.1998 at Gauri OCM-I and he had prepared and submitted the annual report of CMPF in form vv for the currency period of 3/1993 to 3/1998 to Regional Commissioner, CMPF, Nagpur and the workman had accepted during the enquiry that he was doing CMPF work and therefore, question of giving authorization or appointment order as CMPF clerk doesn't arise and the vv statements in question were prepared manually and subsequently typed and submitted to the Regional Commissioner, CMPF, Nagpur duly checked and signed by the workman and copies of those typed vv statements were given to the workman at the time of the enquiry and the copy of manually prepared yy statement by the workman for the same period were also given to the workman during the enquiry and the preparation of vv statement manually was purely rough work and the same were destroyed after the typed vv statement was prepared and therefore asking for vv statement prepared manually has

got no meaning and the enquiry officer in the departmental proceeding though held that the workman was required to produce his own witnesses, he agreed to issue necessary orders to the controlling authority of the eleven witnesses, whose name were included in the list of witnesses furnished by the workman and accordingly issued letter No. 134 dated 10.11.2000, but no witness was present in any of the dates of hearing and the workman did not take any step for the appearance of the witnesses to give evidence and the disputed documents were not prepared by Shri Subhash Pimpalkar and Shri V.L. Mangulkar and the enquiry was held properly and the punishment is not shockingly disproportionate and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 18.05.2012, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the workman had put 18 years of clean and unblemished service with the Party No. 1 prior to his dismissal and he was charge sheeted on 08.06.2000 and according to the said charge sheet, the workman while working as CMPF clerk for the period from 14.10.1992 to 06.06.1998, during the currency period 3/94 and 3/96, he had mentioned excess amount of CMPF contribution that the actual amount in the 'vv' statement against his own CMPF A/c. No. A/7/40/1162 intentionally and he was charge sheeted under clauses 26.1 26.13 and 26.22 of the certified standing orders and as the party no. 1 was not satisfied with the explanation submitted by the workman, the departmental enquiry was constituted and it is an admitted position that no single person used to till in the entries in the vv form manually and for the purpose of filling an entries in the said form, services of more than one person were being taken and the workman alongwith few other clerks were performing the said task, though as per his appointment, the same was not a part of his duty and the Head Clerk, who was overall in-charge of the activities of the particular section is responsible for verification and submission of the entries in the forms yy and vv and the said facts negate the narration in the charge sheet that the workman was responsible for maintaining the said records and it is clear that maintaining the entries in yy and vv forms was not the sole responsibility of the workman, but it was a task done by him alongwith other employees and during the enquiry, though the workman had demanded to supply him the copy of the yy form filled in manually for the relevant period, such documents were not supplied to him and inspite of the demand of the workman to examine the 11 others persons, who were working with him and handling the task of posting of entries in vv form and yy

forms, such persons were not examined by the management and examination of the said persons would have shed light as to who exactly was responsible for the erroneous postings and it can be found that in the enquiry, even by applying the yard stick of preponderance of probability management failed to prove the charges levelled against the workman and the evidence on the record of the enquiry were insufficient to establish that it was the workman, who committed the misconduct with dishonest intention to cause loss to the company and there is no iota of evidence on the record of the enquiry to hold the workman guilty of the charges levelled against him and the findings of the enquiry officer are perverse as he proceeded on wrong premise and the findings are not based on the evidence on record and based on surmises and the enquiry officer did not analyze the evidence in its true perspective and as the findings are perverse, the punishment of dismissal from services passed against the workman is liable to be quashed and set aside and the workman is entitled for reinstatement in service with continuity and full back wages.

6. Per contra, it was submitted by the learned advocate for party No. 1 that in this case, it has already been held that the departmental enquiry conducted against the workman is legal and valid and the vv statement in question were prepared manually and subsequently typed and submitted to Regional Commissioner, CMPF, Nagpur duly checked and signed by the workman and the copy of the vv statement was given to the workman during the enquiry and the copy of the manually prepared vv statement by the workman for the same period was also given to him during the enquiry and the manual preparation of the vv statement was purely rough work so after getting it typed, the manually prepared vv statement was destroyed and therefore, asking for the copy of the manuscript of the typed vv statement by the workman during the enquiry has got no meaning and the reconciliation statement was prepared and signed by the workman and such evidence was adduced by the management during the enquiry and the workman submitted the list of eleven witnesses and though the enquiry officer wrote letter to the concerned authorities for the release of the said witnesses to give evidence *vide* his letter dated 10.11.2000, No witness was present in any of the dates of the hearing of the enquiry and the workman did not take any effective step to see that those persons are examined in the enquiry in his favour and it was the duty of the workman to produce his witnesses in the enquiry and it is clear from the materials on record that the workman did not want to examine those persons and the findings of the enquiry officer are based on the evidence produced during the enquiry and not on surmises and the enquiry officer has rightly arrived at the conclusions after analyzing the evidence on the record of the enquiry in a rational manner and the charges levelled against the workman were proved beyond any doubt and the charges proved against the workman were very serious and grave in nature and as

such, the punishment imposed against is justified and the workman is not entitled to any relief.

7. Before delving into the merit of the matter, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings and regarding the effect of acquittal of an employee by a criminal court, against whom a departmental proceedings was also initiated, by the Hon'ble Apex Court.

In a number of decisions, the Hon'ble Apex Court have held that:—

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

So keeping in view the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered.

8. Perused the material on record including the documents relating to the departmental enquiry held against the workman.

It is to be mentioned here that at the time of passing of the order on the validity of the departmental enquiry, the submissions made by the learned advocate for the workman in regard to the non supply of documents, that the workman was not the CMPF clerk and that the enquiry officer did not take effective steps for the attendance of the eleven witnesses required to be examined as witnesses to bring out the real facts were already considered and as such, there is no need to consider the same again.

On perusal of the materials on record, it is found that this is not a case of no evidence. It is also found that the

report of the enquiry officer is based on the evidence adduced during the enquiry and no extraneous material was taken in to consideration by the enquiry officer to arrive at the findings. The enquiry officer has assessed the evidence in a reasonable manner. It is also found that the findings given by the enquiry officer are not as such, which could not have been arrived at by any reasonable person. The findings of the enquiry officer are therefore nor absurd or perverse.

9. Commission of serious misconduct has been proved against the workman in a properly conducted departmental enquiry. The punishment of dismissal from services imposed against the workman cannot be said to be shockingly disproportionate to the charged proved against him. Hence, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:—

ORDER

The action of the management of Gauri Sub Area (Ballarpur Area) of WCL in dismissing Shri Mohan S/o. Viraiah Darla, Clerk Grade-II at Pouni Open Cast Mine of Western Coalfields Limited from service *vide* order No. WCL/BA/GSA.PER/Dismissed/2001/232 dated 28.3.2001 is legal and justified. The workman is not entitled to any relief.

J.P. CHAND Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 827.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 24/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं. एल-22012/66/2012-आईआर(सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 827.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 24/2012 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, ASANSOL as shown in the Annexure, in the industrial dispute between the management of J.K. Nagar Colliery, M/s. ECL., and their workmen, received by the Central Government on 11/03/2013.

[No. L-22012/66/2012-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present: Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE No. 24 OF 2012

Parties: The Management of J.K. Nagar Colliery,
M/s. ECL, Burdwan (WB)

Vs.

The Branch Jt. Secy., CMC (HMS), Asansol
(W.B.)

Representatives:

For the management : None

For the union (Workman) : None

INDUSTRY: COAL STATE: WEST BENGAL

Dated : 12.02.2013

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/66/2012-I.R.(CM-II) dated 26.04.2012 has been pleased to refer the following dispute for adjudication by the Tribunal.

SCHEDULE

"Whether the action of the management of J.K. Nagar Colliery of M/s. ECL in not payment HRA @ 10% of basic pay to Sri Garib Paswan is fair and justified? To what relief the concerned workman is entitled?

Having received the Order of Letter No. L-22012/66/2012-I.R.(CM-II) dated 26.04.2012 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 24 of 2012 was registered on 16.05.2012 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, I find that Mr. D.K. Routh, Jt. Branch Secretary of the Union has made an endorsement on 07.02.2013 to close the case as the workman is no more interested to proceed with the case. Since the Union as well as the workman is not interested to proceed with the case, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No

Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANATA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 828.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के ई सी एल बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचाट (संदर्भ संख्या 25/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं एल-22012/65/2012-आई आर (सी एम-II)]

बीएम० पटनायक, डेस्क अधिकारी

New Delhi the 11th March, 2013

S.O. 828.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award Ref. 25/2012 of the Cent. Govt. Indus. tribunal-cum-Labour Court, ASANSOL as shown in the Annexure, in the industrial dispute between the management of J.K. Nagar Colliery, M/s. ECL, and their workmen, received by the Central Government on 11/03/2013

[No. L-22012/65/2012-IR(CM-II)]

B.M. PATNAIK Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE No. 25 OF 2012

Parties : The management of J.K. Nagar Colliery,
M/s. ECL, Burdwan(WB)

Vs.

The Branch Jt. Secy. CMC(HMS), Asansol
(W.B.)

Representatives:

For the Management : None

For the union (Workman) : None

INDUSTRY: COAL

STATE: WEST
BENGAL

Dated : 13.02.2013

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/65/2012-I.R. (CM-II) dated 26.04.2012 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of J.K. Nagar Colliery of M/s. ECL in not payment HRA @ 10% of basic pay to Sri Karmuddin Mia is fair and justified? To what relief the concerned workman is entitled to?"

Having received the order of Letter No. L-22012/65/2012-I.R.(CM-II) dated 26.04.2012 of the above said reference from the Govt. of India, Ministry of labour, New Delhi for adjudication of the dispute, a reference case No. 25 of 2012 was registered on 16.05.2012 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that Sri D.K. Routh, Branch Jt. Secretary of the sponsoring Union, has made an endorsement for the closure of the case as the workman is no more interested to proceed with the case further. Since the Union does not want to proceed with the case further, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 829.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी पी डब्ल्यू डी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अधिकरण नं 1, नई दिल्ली के पंचाट (आईडी संख्या 260/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं एल-42012/225/2005-आई आर (सी एम-II)]

बीएम० पटनायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 829.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 260/2011 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, New Delhi as shown in the Annexure, in the industrial dispute between the management of Vigyan Bhawan Electrical Division, CPWD, and their workmen, received by the Central Government on 11/03/2013.

[No. L-42012/225/2005-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE DR. R.K.YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.I, KARKARDOOMA
COURTS COMPLEX, DELHI**

I.D. NO. 260/2011

The General Secretary,
Workers Union,
167, Panchkuin Road
Delhi-110001.

Workman....

Versus

The Executive Engineer (E),
CPWD Electrical Division,
Vigyan Bhawan, CPWD,
New Delhi.

Management....

AWARD

In consultation with the Central Advisory Labour Board and having regard to conditions of work and other relevant factors, specified in su- section (2) of section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as Contract Labour Act), the Central Government prohibited employment of contract labour in work relating to khalasi (electrical) in the establishment of Central Public Works Department, (hereinafter referred as the management), Ministry of Urban Development and Employment, New Delhi, *vide* notification dated 31.07.2002, published in Extraordinary Gazette of India. Despite the prohibition, the management employed contract labours to work as khalasi (Electrical) at its Electrical Division, Vigyan Bhawan, New Delhi. Shri Kamlesh Bahadur Singh was so engaged by the management through M/s Amit

Elevator Services (in short the contractor). He raised a demand with the management for regularisation of his service, which demand was not conceded to. Aggrieved by that act, Shri Kamlesh Bahadur Singh approached the Workers Union (Regd.) (in short the union) for redressal of his grievance. The union took up his cause and raised an industrial dispute before the Conciliation Officer. Since the claim was contested by the management, conciliation proceedings ended into a failure. On consideration of the failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to the Central Government Industrial Tribunal No. II, New Delhi, for adjudication, *vide* order No.L-42012/225/2005-IR (CM-II), New Delhi dated 16.04.2007, with following terms:

"Whether demand of the union for regularisation of services of Shri Kamlesh Bahadur Singh is legal and justified? If yes, to what relief the workman is entitled to?"

2. Claim statement was filed by Shri Kamlesh Bahadur Singh pleading therein that he was employed by the management on 20.01.1998 as Khalasi. He is being paid at daily rate basis, subject to maximum of 26 days' wages in a month. He is working at Electrical Division of the management located at Vigyan Bhawan, New Delhi. He is discharging his duties sincerely and to the satisfaction of his superiors. He was employed by the management and is being paid out of its budget allocation, made as per sanctioned pre-estimated allocations. No appointment letter wage slip, confirmatory letter and prevailing pay scales were given to him. He has to work for more than 12 hours a day but is deprived of his wages for extra work. No leaves on festivals and national holidays are being granted to him.

3. Claimant projects that clandestinely without his knowledge, he was placed by the management under a sham contractor. No prior notice, as stipulated under section 9-A of the Industrial Disputes Act, 1947 (in short the Act) was given to him. Work performed by him is incidental to the main activities of the management and is of perennial nature. His services were not confirmed by the management despite his representation made to the labour authorities. He projects that the union had filed a writ petition before the High Court of Delhi. The writ petition was disposed off by the High Court, wherein some observations were made in his favour. Letter Patent Appeal was filed and High Court disposed off that appeal with liberty to move authorities under the Act. He claims regularisation in services of the management and prays that award may be passed in his favour to that effect.

4. Claim was demurred by the management pleading that there had been no employer and employee relationship between the parties. Claimant was an employee of the contractor, under whose control and supervision he was

working. His wages were paid by the contractor. He has been in the employment of the contractor, who has been providing services of DG set operation at Vigyan Bhawan, New Delhi. It is claimed that there was no question of providing appointment letter, wage slip, confirmatory letter, prevailing wage scales, overtime wages and leaves by the management to the claimant. Claimant never informed the management to the effect that no weekly rest was given to him and he was forced to work for 12 hours in a day. Management claims that the principal employer cannot be required to absorb contract labour in its establishment. Contract was awarded to the contractor as per standard tender procedure. Payments to the contractor are being made as per work done/services provided. Claimant has been working for the contractor as per terms and conditions of agreement in force from time to time. Management claims that claim put forward by the claimant is misconceived, hence it may be dismissed.

5. In rejoinder, facts were reiterated by the claimant.

6. *Vide* order No.Z-222019/6/2007/IR (C-II), New Delhi dated 30.03.2011, case was transferred to this Tribunal for adjudication by the appropriate Government.

7. Claimant had testified facts to substantiate his claim. Shri A.P. Sharma, entered the witness box to fend facts on behalf of the management. No other witness was examined by either of the parties.

8. Arguments were heard at the bar. Shri S.S. Upadhyay, authorized representative, advanced arguments on behalf of the claimant. Shri Pankaj Batra, authorised representative, raised submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

9. In his affidavit Ex.WW1/A, tendered as evidence, Shri Kamlesh Bahadur Singh unfolds that he is in the employment of the management with effect from 20.01.1997. He works as a Khalasi at Electrical Division, Vigyan Bhawan, New Delhi. His present wages are Rs. 4500.00 per month. Since the date of his joining employment with the management, he is performing duties sincerely, honestly and diligently. He was employed through officers of the management and his service conditions are governed by Central Public Works Department Manual III (Work Charge Establishment), 1984. His wages and other monetary benefits are being paid by the management. He has relied on copy of attendance register, log book, pay slip, duty passes issued for various occasions, identity card, etc. to substantiate his claim of being an employee of the management. During the course of his cross examination, he feigned ignorance as to whether he was an employee of a contractor. However, he unfolds that the contractors keep

on changing every year and his wages are being paid by the management. His attention was invited towards his claim statement Ex. WW1/A, wherein he had pleaded that he was placed under a sham contractor, clandestinely.

10. Shri A.P. Sharma unfolds in his affidavit Ex. MW1/A, tendered as evidence, that there was no employer-employee relationship between the parties. Claimant was an employee of the contractor and was working under his direct control and supervision. At no point of time, he was employed by the management. His wages were paid by the contractor. Payment towards specific jobs entrusted to the contractor were made to the contractor. He placed reliance on employment card and attendance register, prepared by the contractor, in order to establish that the claimant was an employee of the contractor.

11. When facts unfolded by the claimant and those detailed by Shri A.P. Sharma are appreciated, it emerged that the parties have made rival claims relating to employment of the claimant. According to the claimant, he was employed by the management which fact is dispelled by Shri Sharma. Therefore, ocular facts detailed by above two witnesses are to be construed in the light of documents proved by them. Employment card Ex. MW1/1 has been proved by Shri Sharma, which bring it over the record that the claimant was an employee of the contractor. He was engaged as khalasi by the contractor. This card Ex. MW1/1 was issued by the contractor for a period of six months from 14.11.2005 to 14.04.2006. Photocopies of wage registers are proved as Ex.MW1/2 to Ex.MW1/7. On these copies of wage register name of the claimant does appear, besides names of other employees. Claimant does not dispute those documents. These wage registers pertain to the contractor, who paid wages to the claimant from time to time. Claimant places reliance on passes Ex.MW1/W1 to Ex.MW1/W5. Ex. MW1/W4 to Ex.MW1/W5 project these passes were issued by the management in favour of the claimant. Ex. MW1/W4 was issued for performance of duty by the claimant on the Republic Day Parade for the year 2000. Ex.MW1/W5 was issued in favour of the claimant to perform his duties in a seminar organised from 21.10.2009 to 23.10.2009.

12. The claimant had proved certain documents to substantiate his claim. Ex.WW1/1 is the document which projects that workers, including him, have received their entire wages upto 15.04.2007. Ex.WW1/2 is photocopy of attendance register wherein attendance of the claimant for 19 days for the month of October 1998 has been projected. Ex.WW1/3 is photocopy of attendance record for January 1999, Ex.WW1/4 to Ex.WW1/8 are photocopies of attendance register for April 2000, December 2001, January 2002, January 2003 and June 2004 respectively. Ex.WW1/9 to Ex.WW1/19 are photocopies of log book. Ex.WW1/9 pertains to January 1997, Ex.WW1/15 pertains to

March 2005, Ex.WW1/16 relates to June 2005 and Ex.WW1/19 belongs to October 2005. Ex.WW1/10 to Ex.WW1/14, Ex.WW1/17 and Ex.WW1/18 nowhere contain date, month and year to which it belongs. Ex.WW1/20 to Ex.WW1/25 are copies of duty charts for June 2002, May 2008, November 2009, January 2010, November 2010 and December 2010 respectively. Ex.WW1/26 is a letter written by the Executive Engineer to the Chief Security Officer for issuance of duty passes for the staff, who would remain on duty for 25th and 26th January 2003 at Vigyan Bhawan and Vigyan Bhawan Annex, whose names figure in Ex.WW1/27. Ex.WW1/28 and Ex.WW1/29 are similar requests by the Executive Engineer (Electrical) to the Chief Security Officer, Ministry of Home Affairs, Government of India, New Delhi. Ex.WW1/30 to Ex.WW1/35 are temporary passes/identity cards issued in favour of the claimant. Ex.WW1/36 is a letter written to the Security Officer, by the Junior Engineer. Ex.WW1/37 to Ex.WW1/43 are photocopies of passes issued in favour of the claimant. Ex.WW1/44 is a certificate issued by the Electrical Inspectorate, Labour Department, Government of India, New Delhi. Ex.WW1/45, Ex.WW1/46 and Ex.WW1/47 are orders alongwith list of writ petitions filed, which were disposed off *vide* order 26.05.2000, besides order dated 22.08.2000 passed in LPA No. 388/2000 by High Court of Delhi. Ex.WW1/48 is photocopy of notification dated 31.07.2002, issued by the Government of India, New Delhi.

13. Cumulative effect of documents relied by the parties bring it to the light that the claimant was an employee of the contractor. Ex.MW1/1 is the employment card issued by the contractor in favour of the claimant. On this document, signature of the claimant do appear. Further more, claimant could question it when Shri Sharma proved it. Ex.MW1/2 to Ex.MW1/7 are wage register on the strength of which contractor made payment of wages to his employees. Name of the claimant does appear in these registers. Ex.MW1/2 is for April 2006, Ex.MW1/3 is for February 2007, Ex.MW1/4 is for March 2007, Ex.MW1/5 is for April 2007, Ex.MW1/6 is for May 2007 and Ex.MW1/7 is for June 2007. No eyebrows were raised by the claimant against these documents. On the other hand, his name and signatures appear in those documents, in token of fact that he was paid wages for the aforesaid months by the contractor. Ex.WW1/1 is a letter written by the Executive Engineer wherein it has been detailed that wages of the claimant and others have been paid upto 15.04.2007. Ex.WW1/1 projects that the Assistant Engineer also confirms that fact. Copy of this document was sent to the Labour Commissioner also. Therefore, this document crystallises that a dispute was raised by the claimant and others in respect of non-payment of their wages. When those wages were paid, the Assistant Engineer certified that fact and letter was written to the Executive Engineer,

with copy to the Labour Commissioner. Contents of the letter coupled with the surrounding circumstances suggest that the Executive Engineer and the Labour Commissioner were informed that the wages were received by the contract labours till 15.4.2007. Their wages were paid in presence of the Assistant Engineer, through cheques. Therefore, this document also gives confirmation to the theory that the claimant was paid his wages by the contractor. Other documents, proved by the claimant and are referred above, nowhere give any clue as to who paid wages to the claimant. Copy of attendance register as well as log book nowhere specify that these documents were maintained by the management. Documents, such as duty passes, duty charts and temporary passes would be appreciated in subsequent sections, since these documents nowhere espouses the case of the claimant to the effect that he was paid by the management for the work of khalasi performed by him at Vigyan Bhawan, New Delhi.

14. There is other facet of the coin. Claimant, alongwith others, filed writ petitions before the High Court of Delhi, seeking their regularization in services of the management. Ex.WW/46 projects that the claimant and others sought regularization/direct absorption in the services of the management. Thus, it is evident that the case projected by the claimant was that he is a contract employee. While disposing his matter, the High Court considered his case as of a contract employee. Therefore, it is evident that claimant was a contract employee and at a subsequent juncture he tried to improvise upon and claimed that he was employed by the management. Ex.WW1/M1 also projects his case when he details that clandestinely he was brought under a sham contractor by the management. All these aspects reaffirm that the claimant was an employee of the contract, who was his paymaster. Under these circumstances, it is concluded that the claimant has not been able to establish that he was ever paid by the management for the work of khalasi (Electrical), rendered by him at Vigyan Bhawan, New Delhi.

15. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the management? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour Act, which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

- (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State

Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

16. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I.]. The Apex Court rules therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"..... they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2)

where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

17. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case (1974 (3) SCC 66), the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

18. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

19. In Shivnandan Sharma [1955 (1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

"If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

20. In Hussainbhai (*supra*) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to

produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

21. In Steel Authority of India (*supra*) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (*supra*) and in Indian Petrochemicals Corporation case

[1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

22. In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the management since he agitates that the contract agreement between the management and the Contractor is sham and nominal.

23. Whether any directions for deeming the contract labour as having become the employee of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

24. In the Steel Authority of India (supra) the Apex Court laid emphasis "..... the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the

principal of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act of Rules made thereunder the contract labour could not be deemed to have become the employee of the principal employer.

25. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the management and the contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW1/8 by Shri Sharma. In construction of contents of Ex.MW1/8, this Tribunal cannot be oblivious of the rules *viz.*, written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

26. Whether Ex.MW1/8 contains clauses which are contra bonos mores or forbidden by law? For answer of above proposition, the Tribunal had to dwell upon the clauses of Ex.MW1/8, described as Model Rules For Protection of Health and Sanitation Arrangement for the Workers and Contract Labour Regulations, framed by the management. When perused Model Rules for Protection of Health and Sanitation Arrangement has taken care of it came to light that provisions have been made for first aid facilities, drinking water, washing facilities, latrine and urinals, provision for centre during rest, creches, canteen and anti malarial protections. It emerges over record that suitable arrangements were made for protection of health and sanitary arrangement for the employees of the contractor. Contract Labour Regulations formulated by the management speak of payment of wages by the contractor. For sake of convenience, the same are extracted thus:

- (i) The contractor shall fix wage periods in respect of which wages shall be payable.
- (ii) No wage period shall exceed one month.
- (iii) The wages of every person employed as contract labour in an establishment or by a contractor where less than one thousand, such persons are employed shall be paid before the expiry of the seventh day and in other cases before the expiry of tenth day after the last day

of the wage period in respect of which the wages are payable.

(iv) Where the employment of any worker is terminated by or on behalf of the contractor, the wages earned by him shall be paid before the expiry of the second working day from the date on which his employment is terminated.

(v) All payments of wages shall be made on a working day at the work premises and during the working time and on a date notified in advance and in case the work is completed before the expiry of the wage period, final payment shall be made within 48 hours of the last working day.

(vi) Wages due to every worker shall be paid to him direct or to other person authorised by him in this behalf.

(vii) All wages shall be paid in current coin or currency or in both.

(viii) Wages shall be paid without any deductions of any kind except those specified by the Central Government by general or special order in this behalf or permissible under the payment of Wages Act, 1956.

(ix) A notice showing the wages period and the place and time of disbursement of wages shall be displayed at the place of work and a copy sent by the contractor to the Engineer-in-Charge under acknowledgement.

(x) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the Engineer-in-Charge or any other authorised representative of the Engineer-in-Charge who will be required to be present at the place and time of disbursement of wages by the contractor to workmen.

(xi) The contractor shall obtain from the Engineer-in-Charge or any other authorised representative of the Engineer-in-Charge as the case may be, a certificate under his signature at the end of the entries in the "Register of wages" or the "Wage-cum-Muster Roll" as the case may be in the following form:

"Certified that the amount shown in column No has been paid to the workman concerned in my presence on at....."

27. Contractor was ordained to maintain register for persons employed on work, muster roll register, wage register, register of accidents, register of fines, register for

deduction for damages or loss, register of advances, register of overtime work performed by the contract employees. He was burdened with an obligation to issue identity card cum wage slip, employment card and service certificate.

28. Records referred above were to be preserved by the contractor for a period of three years. Labour Officers were empowered to make investigations or enquiry with a view to ascertain and enforce due and proper observance of the regulations. Therefore, it emerges that proper regulations were made by the management in order to see that the contract employees get their dues under the law.

29. Clause 19 of the contract imposes an obligation on the contractor to obtain a license under the Contract Labour Act. He was further saddled with a duty to abide by the provisions of Child Labour (Prohibition & Regulation) Act, 1998. Besides Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996 and other Construction Workers Welfare Cess Act, 1996. On his failure to fulfil requirement of the above statutes, he was to attract penal provisions as arising out of resultant non-execution of the work. He was to make payment of wages to his employees. Provisions relating to the same are reproduced thus:

- (i) The contractor shall pay to labour employed by him either directly or through sub-contractors, wages not less than fair wages as defined in the DAE, Contractor's Labour Regulations or as per the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971, wherever applicable.
- (ii) The contractor shall notwithstanding the provisions of any contract to the contrary, cause to be paid fair wage to labour indirectly engaged on the work, including any labour engaged by his sub-contractors in connection with the said work, as if the labour had been immediately employed by him.
- (iii) In respect of all labour directly or indirectly employed in the works for performance of the contractor's part of this agreement, the contractor shall comply with or cause to be complied with the DAE Contractor Labour Regulations made by Government from time to time in regard to payment of wages, wage period, deductions from wages, recovery of wages not paid and deductions unauthorisedly made, maintenance of wage books or wage slips, publication of scale of wages and other terms of employment, inspection and submission of periodical returns and all others matters of the

like nature or as per the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules 1971, wherever applicable.

- (iv-a) The Engineer-in-Charge concerned shall have the right to deduct from the moneys due to the contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers by reasons of nonfulfillment of the conditions of the contract for the benefit of the workers, non-payment of wages or of deduction made from his or their wages which are not justified by their terms of the contract or non-observance of the regulations.
- (iv-b) Under the provisions of the Minimum Wages Act 1948 and the Minimum Wages (Central) Rules, 1950, the contractor is bound to allow or cause to be allowed to the labourers directly or indirectly employed in the works one day's rest for six days continuous work and pay wages at the same rate as for duty. In the event of default, the Engineer-in-Charge shall have the right to deduct the sum or sums not paid on account of wages for weekly holiday to any labourer, and pay the same to the persons entitled thereto from any money due to the contractor by the Engineer-in-Charge.
- (v) The contractor shall comply with the provisions of the Payment of Wages Act 1936, Minimum Wages Act, 1948, Employees Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefit Act, 1961 and the Contractor's Labour (Regulation and Abolition) Act, 1970 or the modifications thereof or any other laws relating thereto and the rules made there under from time to time.
- (vi) The contractor shall indemnify and keep indemnify Government against payments to be made under and for the observance of the laws aforesaid and the D.A.E., Contractor Labour Regulations without prejudice to his right to claim indemnify from his sub-contractors.
- (vii) The laws/regulations aforesaid shall be deemed to be a part of this contract and any breach thereof shall be deemed to be a breach of this contract.
- (viii) Whatever is the minimum wage for the time being, or if the wage payable is higher than such wage, such wage shall be paid by the contractor to the workmen directly without the intervention of Jamadar and that Jamadar shall not be entitled to deduct or recover any amount from the

minimum wage payable to the workmen as and by way of commission or otherwise.

- (ix) The contractor shall ensure that no amount by way of commission or otherwise is deducted or recovered by the Jamadar from the wage of workmen.

30. Leave and pay are to be regulated in the following manner:

Leave and pay during leave shall be regulated as follows:

(1) **LEAVE:**

- (i) **In the case of delivery :** Maternity leave not exceeding 8 weeks, 4 weeks upto and including the day of delivery and 4 weeks following that day.
- (ii) **In the case of miscarriage :** Upto 3 weeks from the date of miscarriage.

(2) **PAY:**

- (i) **In the case of delivery :** Leave pay during maternity leave will be at the rate of the women's average daily earnings, calculated on the total wages earned on the days when full time work was done during a period of 3 months immediately preceding the date on which she gives notice that she expects to be confined or at the rate of rupee one only a day whichever is greater.
- (ii) **In the case of miscarriage :** leave pay at the rate of average daily earning calculated on the total wages earned on the days when full time work was done during a period of 3 months immediately preceding the date of such miscarriage.

(3) **CONDITIONS FOR THE GRANT OF MATERNITY LEAVE:**

No maternity leave benefit shall be admissible to a woman unless she has been employed for a total period of not less than 6 (six) months immediately preceding the date on which she proceeds on leave.

- (4) The contractor shall maintain a register of maternity (Benefit) in the prescribed form as given below, and the same shall be kept at the place of work.

31. As far as supervision and superintendence of employees of the contractor are concerned, following provisions were made:

Contractors Superintendence, Supervision, Technical Staff & Employees.

- (i) The contractor shall provide all necessary

superintendence during execution of the work and all along thereafter as may be necessary for proper fulfilling of the obligations under the contract. The contractor shall immediately after receiving letter of acceptance of the tender and before commencement of the work, intimate in writing to the Engineer-in-Charge, the name(s), qualifications, experience, age, address(s) and other particulars along with certificates, of the principal technical representative to be in charge of the work and other technical representative(s) who will be supervising the work. Minimum requirement of such technical representative(s) and their qualifications and experience shall not be lower than specified in Schedule "F". The Engineer-in-Charge shall within 3 days of receipt of such communication intimate in writing his approval or otherwise of such a representative(s) to the contractor. Any such approval may at any time be withdrawn and in case of such withdrawal, the contractor shall appoint another such representative(s) according to the provisions of this clause. Decision of the tender accepting authority shall be final and binding on the contractor in this respect. Such a principal technical representative and other technical representative(s) shall be appointed by the contractor soon after receipt of the approval from Engineer-in-Charge and shall be available at site before start of work. All the provisions applicable to the principal technical representative under the clause will also be applicable to other technical representative(s). The principal technical representative and other technical representative(s) shall be present at the site of work for supervision at all times when any construction activity is in progress and also present himself/themselves, as required, to the Engineer-in-Charge and/or his designated representative to take instructions. Instructions given to the principal technical representative or other technical representative(s) shall be deemed to have the same force as if these have been given to the contractor. The principal technical representative and other technical representative(s) shall be actually available at site fully during all stages of execution of work, during recording/checking/test checking of measurements of works and whenever so required by the Engineer-in-Charge and shall also note down instructions conveyed by the Engineer-in-Charge or his designated representative(s) in the site order book and shall affix his/their signature in token of noting down the instructions and in token of acceptance of measurements/checked measurements/test

checked measurements. The representative(s) shall not look after any other work. Substitutes, duly approved by Engineer-in-Charge of the work in similar manner as aforesaid shall be provided in event of absence of any of the representative(s) by more than two days. If the Engineer-in-Charge, whose decision in this respect is final and binding on the contractor, is convinced that no such technical representative(s) is/are effectively appointed or is/are effectively attending or fulfilling the provision of this clause, a recovery (non-refundable) shall be effected from the contractor as specified in Schedule "F" and the decision of the Engineer-in-Charge as recorded in the site order book and measurement recorded checked/test checked in Measurement Books shall be final and binding on the contractor. Further if the contractor fails to appoint suitable technical/Principal technical representative and/or other technical representative(s) and if such appointed persons are not effectively present or are absent by more than two days without duly approved substitute or do not discharge their responsibilities satisfactorily, the Engineer-in-Charge shall have full powers to suspend the execution of the work until such date as suitable other technical representative(s) is/are appointed and the contractor shall be held responsible for the delay so caused to the work. The contractor shall submit a certificate of employment of the technical representative(s) alongwith every on account bill/final bill and shall produce evidence if at any time so required by the Engineer-in-Charge.

- (ii) The contractor shall provide and employ on the site only such technical assistants as are skilled and experienced in their respective fields and such foremen and supervisory staff as are competent to give proper supervision to the work. The contractor shall provide and employ skilled, semiskilled and unskilled labour as is necessary for proper and timely execution of the work. The Engineer-in-Charge shall be at liberty to object to and require the contractor to remove from the works any person who in his opinion misconducts himself or is incompetent or negligent in the performance of his duties or whose employment is otherwise considered by the Engineer-in-Charge to be undesirable. Such person shall not be employed again at works site without the written permission of the Engineer-in-Charge and the persons so removed shall be replaced as soon as possible by competent substitute.

32. When above terms of Ex. MW 1/8 are taken into account, it emerges that a perfect paper arrangement was made when these documents were executed. Reasons for the above observation are evident out of above clauses itself. As per contents of the written statement contract was awarded to the contractor for providing services of D.G. set operation at Vigyan Bhawan, New Delhi. As noted above, clauses relating to contractor's superintendence, supervision, appointment of technical staff and technical representative(s) project that these stipulations relate to construction activities. It has been detailed therein that the principal technical representative and other technical representative, appointed by the contractor, shall be actually available at the site during all stages of execution of work, during recording/checking/test checking of measurements of work and nothing it down in site order book and measurement book. These instructions are irrelevant for discharge of contractual obligations of providing D.G. set operations at Vigyan Bhawan, New Delhi. Whether these provisions were detailed in Ex. MW 1/8 with a view to fasten liability on the contractor for the obligations, undertaken by him on the strength of the document referred above? Answer lies in negation, since the contractor has not undertaken any liability to carry out any construction activities. It cannot be said that these terms were recorded due to inadvertence. The circumstances, which emerge out of Ex. MW 1/8, make it apparent that a standard document was drafted by the management to get it executed from the contractor, no matter that these terms are to be adhered to or not. It was so done with a view to project that the contract agreement does not infringe rights available to contract employees under beneficial labour legislations. It is apparent that the terms, contained in Ex. MW 1/8, are mere eye wash and parties never intended to act upon the same.

33. Peculiar features, which are detailed herein under, tamper with the intrinsic worth of the case of the management. "Duty slips Ex. WW 1/20 to Ex. WW 1/25 highlight that it was the officer of the management who used to prepare duty sheet for the contract employees, including the claimant. Ex. WW 1/26 was written by the Engineer for issuance of passes for 25th and 26th January 2003 for the employees, who were to perform duties at Vigyan Bhawan as well as Vigyan Bhawan annexe. Name of the claimant figures at serial No. 54 of Ex. MW 1/27, annexed with Ex. WW 1/26, When contents of Ex. WW 1/27 are scrutinised, it crystallises that from the level of Executive Engineer to the level of Khalasi/Helper figure in the list for whom duty passes were obtained. Tone and tenor of these documents project that request was made for issuance of duty passes for the persons who were working for the management. Such request was made for issuance of duty passes for 25th and 26th January 2006, on the strength of letter Ex. WW 1/28. Name of the claimant figures at serial

No. 15 of the employees, for whom duty passes were to be obtained. Ex. WW 1/29 was written for issuance of passes for 25th and 26th January, 2007 and name of the claimant is there at serial No. 11 of the list annexed therin. These documents nowhere project that the claimant was an employee of the contractor. On the Other hand, his name is in the list, containing names of the Officers of the management, who were to perform duties on republic day parade. Duty passes were issued to the claimant for Republic Day parade for the year 2000, 2001, 2004, 2005 and 2006. In all these passes, he has been shown as employee of the management.

34. Ex. WW 1/35 is the identity card issued in his favour by the Administration Officer, National Museum, Government of India, New Delhi, wherein it has been detailed that the claimant was an employee of the management. This identity card was valid upto 31.12.2002 and issued on 04.02.1999. Contents of Ex. WW 1/35 bring it over the record that the claimant was deputed in February 1999 to work at National Museum and he performed his duties there for the management till 31.12.2002. He has been projected as support staff/technical staff in Ex. WW 1/37 to Ex. WW 1/39. Ex. WW 1/40 to Ex. WW 1/43 highlight that the claimant was an employee of the management. Except Ex. WW 1/41, these passes were issued by AC (Security) for DCP (Security). Ex. WW 1/W4 was issued by the Executive Engineer of the management. Ex. WW 1/W5 was issued for conference on Climate change and Technology Development and Transfer" wherein claimant has been shown as employee of the management. These documents clinch that the claimant was treated as its employee by the management for a long period. However, contractor was interposed in-between. As detailed above, contract document Ex. WW 1/8 is a perfect paper arrangement. The circumstances, which peep out of the above documents, make it clear that Ex. WW 1/8 was not genuine. Consequently, this document, is found to be bogus and created with a view to project the claimant as an employee of the contractor. Lifting the veil, I conclude that direct relationship of employer and employee existed between the claimant and the management. He is deemed to be an employee of the management from 04.02.1999 till date.

35. For adjudication of an issue for regularization of services of the claimant with the management, the Tribunal is called upon to consider as to whether he was eligible for recruitment in Government job, on date when he was initially engaged by the contractor. It is also to be taken into consideration as to whether he was having requisite qualification for the post of Khalasi (Electrical). Except Ex. WW 1/14, no other piece of evidence has been brought over the record. Ex. WW 1/14 is a certificate issued in favour of the claimant by the Electrical Inspectorate, Labour Department, Government of India, New Delhi on 21.06.2007.

The certificate is valid from 23.11.2006 to 22.11.2007. For want of other requisites for regularization of the job of the claimant, the Tribunal feels constrained to grant relief in his favour. However, the management is commanded to consider case of the claimant for regularization in service, with whom the claimant would furnish requisite information within a period of four months from the date the award comes into operation.

36. In view of reasons detailed above, it is concluded that claimant is deemed to be in service of the management since February 1999. He will get his wages as per pay scales for his category. His case for regularization would be considered by the management within a period of four months from the date award comes into operation. An award is accordingly passed in favour of the claimant and against the management. It be sent to the appropriate Government for publication.

DR. R.K. YADAV, Presiding Officer

Dated : 11.02.2013

नई दिल्ली, 11 मार्च, 2013

कानून 830.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचाट (संदर्भ संख्या 31/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 11032013 को प्राप्त हुआ था।

[सं एल-22012/258/2002-आई आर (सी एम-II)]

बी एम पटनायक, डेस्क अधिकारी

New Delhi, The 11th March, 2013

S.O. 830.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 31/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Chinkakuri Mine-I, Under Sodepur Area of M/s. ECL, and their workmen, received by the Central Government on 11/03/2013

[No. L-22012/258/2002-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SANSOL

Present : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 31 OF 2003

Parties : The management of Chinakuri Mine-1, M/s. ECL, Burdwan (WB)

Vs.

The Chief Org. Secy., KMC, Asansol (W.B.)

Representatives:

For the management : P.K. Das, Ld. Advocate

For the union (Workman) : None

INDUSTRY : COAL

STATE : WEST
BENGAL

Dated - 13.02.13

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/258/2002-I.R.(CM-II) dated 08.08.2003 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Chinakuri Mine-1 under Sodepur Area of M/s. ECL in stopping SLU benefits in respect of Sh. Rashid & 11 others (as per list enclosed) is legal and justified? If not, to what relief they are entitled?"

Having received the order of Letter No. L-22012/258/2002-I.R.(CM-II) dated 08.08.2003 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 31 of 2003 was registered on 01.10.2003 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the Union is neither appearing nor taking any step since 2006 despite registered notices. Several opportunities were given but of no effect. It seems that the workman is now no more interested to proceed with the case further. Since the Union does not want to proceed with the case further, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt.

of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUAMR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का आ 831— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की था 17 के अनुसर में केन्द्रीय सरकार सीरियार्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलेर के पंचाट (आईडी संख्या 54/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.03.2013 को प्राप्त हुआ था।

[सं एल-42012/185/2004-आई आर (सी एम-II)]

बीएम पट्टायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 831.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 54/2007 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Central Power Research Institute, and their workmen, received by the Central Government on 11.03.2013.

[No. L-42012/185/2004-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 25th February, 2013

Present : Shri S.N. NAVALGUND
Presiding Officer

C.R. No. 54/2007

I Party

The General Secretary,
Central Power Research
Institute
Employees Union,
No. 822, 1st Main Road,
Yeshwanthpur,
Bangalore—560 022.

II Party

The Director General,
Central Power Research
Institute,
Prof. Sir C. V. Raman Road,
Sadasivanagar P. O. P. B.
No. 8066,
Bangalore—560 022.

Appearances

I Party : Shri T. S. Anantharam, Officer, CITU
II Party : Shri Lakshman Murthy, Advocate

AWARD

1. The Central Government which had not passed any order on the FOC Report No. 8(13)/2004-B3 dated 28.09.2004 of the ALC(C), Bangalore, being directed by the Hon'ble High Court of Karnataka in the Writ Petition No. 19949/2005 filed by the General Secretary, Central Power Research Institute Employees Union (CPRIEU) at whose instance the conciliation was initiated to pass appropriate orders in accordance with law on the said failure report *vide* Order No. L-42012/185/2004-IR(C-II) dated 02.04.2007 made a reference for adjudication as to

“whether the demand of the Union at serial number 1 to 3 (enclosed) in their charter of demands is legal and justified? If so to what relief the workmen are entitled to?”

Later being again directed by the Hon'ble High Court of Karnataka in contempt petition No. 144/2007 moved by the General Secretary, CPRI Employees Union made another reference *vide* order No. L-42012/185/2004-IR(C-II) dated 05.06.2007 referring the remaining eight demands of the Union at Sl. No. 4 to 12 in their charter of demand. As per the annexure enclosed to the above references the demands of the Union are as under:

Demand No. 1: The Union has alleged that there are certain anomalies in the pay scales which need rectification.

Demand No. 2: The Union has demanded suitable amendments in working rules of CPRI so as to make the assessment period uniform in respect of all employees.

Demand No. 3: The Union has demanded the overtime wage to be paid at twice the normal rates of wages and payment of conveyance allowance, canteen facilities on holidays to the workers who do overtime works.

Demand No. 4: The employees and their family members should be provided the facility of full medical reimbursement on production of bills irrespective of inpatient or outpatient since CPRI collects contribution.

Demand No. 5: The Union has demanded quality food from the canteen along with hygiene and quantity.

Demand No. 6: The transport allowance should be increased by 30% every year.

Demand No. 7: Group C and D employees should not be transferred to any out station under any circumstance.

Demand No. 8: Two paid of good quality uniform along with leather shoes should be provided every year.

Demand No. 9: Washing allowance @ Rs. 100/- should be paid to the employees.

Demand No. 10: The Union says that since CPRI is a revenue earning organisation, bonus @ 20% per year should be paid.

Demand No. 11: Since CPRI is earning revenue from commercial testing, both within the units and also by way of field testing, the existing Field Testing Allowances should be suitably enhanced.

Demand No. 12: The Ministerial staff should be given the next higher scale irrespective of vacancy at the time of promotion.

2. After receipt of both reference orders when notices were issued to The General Secretary, CPRIEU (hereinafter referred as I party) and The Director General, CPRI (hereinafter referred as II Party) both entered their appearances through their respective counsel and filed their claim statement and counter statement on 30.08.2007 and 07.03.2008 respectively.

3. In the claim statement filed by the I Party it is alleged majority of the employees working in the II Party formed a trade union under the name and style of CPRI Employees Union and got it Registered under the Trade Union Act, 1926 and Rules there under *vide* Registration Certificate No. DRT (B-1)/TUA/SR-01/03-07 dated 26.05.2003 and informed the formation of the Union to the II Party and requested to recognize the Union as it is the only Union existing in the II Party establishment and as the II Party management was reluctant to recognise for the reasons best known to them the Union submitted a list of demands *vide* its letter dated 14.01.2004 which were the legitimate demands of the workers and as the II Party failed to consider the same the I Party Union left with no other alternative approached the conciliation officer and due to the adamant, hostile and non-cooperative attitude adopted by the II Party the conciliation ended in failure. It is further stated that in spite of lapse of reasonable period the dispute was being not referred to the court for adjudication the I Party Union filed W.P. No. 19949/2005 before the Hon'ble High Court of Karnataka seeking direction to the appropriate authority to refer the dispute for adjudication and the Hon'ble High Court by order dated 14.09.2006 when directed the concerned authorities to pass appropriate order over the failure report the order dated 02.04.2007 was passed referring for adjudication only three demands and declined to refer the other nine demands findings them unfit for adjudication and thereafter in the contempt petition moved by the I Party Union in 144/2007 when Hon'ble High Court of Karnataka was pleased to direct to refer the remaining eight demands (Sl. No. 4 of 12) also for adjudication, the second order for reference dated 05.06.2007 came to be passed for adjudication of other demands also. It is also stated in the claim statement that the II Party management being an autonomous research and development organisation under the administrative control of Ministry of Power, Government of India the disputes between the employees and the management in connection with the ID Act, 1947 will come before the Office of the Regional Labour Commissioner (C), Bangalore since the appropriate

government is the Central Government and that the various demands mentioned in the charter of demands being genuine, *bona fide*, legal and justified, it was very much obligatory on the part of the II Party to implement them and that various establishments/organisation similarly placed as that of the II Party management have chosen to implement the various demands mentioned in the charter of demands but unfortunately the II Party has taken most adamant stand of not implementing their demands without any valid and justified reasons for the reasons best known to them. It is further elaborated with regard to each charter of demand as under:

Charter of Demands:

1. Implementation of 5th Pay Commission Scales:

The demand of the employees with regard to rectification of anomalies and implementation of revised pay scale as per the recommendation of the 5th Pay Commission, Government of India with effect from 01.01.1996 is since pending. The pay scales with retrospective effect shall be revised and implemented as per with the scales prevailing in other institutions.

The management implemented all the eligibility conditions for the revision of pay scale unilaterally and it caused disparity in the wage revision. The existing eligibility conditions in this regard should be withdrawn.

As per the existing rules the scale of pay for Technician Grade-I/Technical Attendant Grade-3 is Rs. 950-1400. After promotion to the post of Technician Grade-2/ Technical Grade-4 it is fixed in the scale of pay Rs. 1150-1500. In the clerical staff the scale of pay is fixed at Rs. 1200/- after one promotion from Rs. 950. As per the 5th pay commission Rs. 1200/- scale becomes Rs. 4000/-.

Whereas Rs. 1150/- scale of Technical Attendant Grade-4 becomes only Rs. 3200/- After 14 years of service from TA Grade-3 in scale of Rs. 950/- scale get the scale of Rs. 4000/-. Hence, the 1st party Union to fix the scale of Rs. 1150 to Rs. 4000/- scale instead of Rs. 3200/- to the technical staff also.

The following difference in the scale of pay is noticed:

Clerical Staff	Technical Staff		
Rs. 950/-	Rs. 3050/-	Rs. 950/-	Rs. 3050/-
Rs. 1200/-	Rs. 4000/-	Rs. 1150/-	Rs. 3200/-
Rs. 1400/-	Rs. 5000/-	Rs. 1320/-	Rs. 4000/-

As per the 5th Pay Commission the scale of Rs. 1400/- is fixed at Rs. 4500/-. But in CPRI, it is fixed at Rs. 5000/-. Similarly the scale of Rs. 1150/- which is now fixed at Rs. 3200/- may please be fixed at Rs. 4000/-.

Rs. 975/- scale was not existing in CPRI before 5th Pay Commission. Rs. 1150/- basic was brought/reduced to Rs. 975/- scale (a reduction of Rs. 175/-). Instead by increasing the scale of Rs. 50/- in the scale of Rs. 1200/- could have been fixed at Rs. 4000/- scale.

In many cases Rs. 875/-, 950/-, 975/-, 1150/- scales has been fixed at Rs. 4000/- scales in different organisations.

The 1st Party Union request this Hon'ble Tribunal be pleased to consider this and remove the anomalies.

As per the CPRI Rules there is no further promotion for Technical Attendant Grade-5. Additional promotion to the post of Technical Attendant Grade-6 may please be incorporated.

It is submitted that the organisations such as ISRO, NAL, ISSC, DRDO, DOORDARSHAN etc., have done so. But the 2nd Party management has failed to implement the same, which has resulted in huge monetary loss to the employees and the same is causing mental agony also. This demand is required to be met to avoid anomalies and industrial unrest amongst the employees.

2. On Assessment period for promotions:

Suitable amendments should be made in the working rules of CPRI in order to make the Assessment period for promotions uniform for all categories of employees:

The review period towards promotions is fixed at 5 years for Engineers, Officer and other grades. However, it is not the same in case of Technicians and Technical Attendants. Hence, it is demanded to make review period in line with higher grades. Hence, suitable amendments should be made in the working rules of the 2nd party management in order to make the assessment period for promotions, uniform for all the categories of employees. The concerned employees have given various representations over the aforesaid two demands to the 2nd party management mentioning clearly as to how injustice has been caused to them, when compared to the other cadre. Unfortunately, the 2nd party management has not chosen to concede the said demands, though, the aforesaid demands are genuine and justified. Copy of representation given and enclosed herewith and marked as Annexures.

3. On overtime work:

(a) Two times of the wages should be paid as overtime allowance. In addition to that also conveyance allowance and canteen facilities should be provided during holidays.

(b) Canteen facilities should also be provided after office hours on all working days for the employees working overtime.

It is submitted that the employees will do overtime work with a good intention to achieve better results. If the 2nd party management want any employees to do overtime work, then it is mandatory on the part of the 2nd party management to pay double wages for the said period, if not, it would amount to exploitation of labour.

4. Medical Reimbursement:

The employees and their family members should be given full medical reimbursement on production of medical bills irrespective of in-patient or out-patient as employees contribution is collected. Health scheme should be revised with mutual discussion.

It is submitted that all the employees are finding very difficult to meet both ends with the meagre wages drawn by them. The treatment has to be obtained as per the advise given by the doctors. Much time, the treatment is given by treating the concerned person as an out-patient only, through the illness is quite serious one. Hence, the nature of treatment and the medical bills etc., has to be taken into consideration for medical reimbursement instead of differentially between an inpatient and an out-patient.

5. Canteen facility:

Quality of food in the canteen should be hygienic, qualitative and quantitative.

Each establishment must initiate steps to provide the essential items in the canteen at a subsidized rates. If the canteen is established inside the establishment by providing all infrastructures, then, it would be possible to provide the items at a subsidized rates to the employees. All departmental canteens which are existing in similar establishments are providing food items at a subsidized rates. Hence, this demand is very much justified one.

Present rate : CPRT pays Rs. 18/- for food, Rs. 3/- for coffee/tea and for breakfast, inspite of providing room-canteen hall with kitchen items, solar heater free and gas connection - only gas has to be purchased, 100s of unit of electricity unit is also given free above certain unit contractor has to pay. Whereas, Hotels such as "Samrat" near to CPRI offers similar food for Rs. 12/- without any facilities, likewise there are many benefits to outsiders, but the management is not taking anything to its books inspite of repeated requests, demand etc., for the reasons best known to them.

6. Transport Allowance:

30% increase in transport allowance every year should be given in addition to the existing allowance.

It is a fact that the concerned authorities are in the habit of raising the bus fares during each year by given

one reasons or the other. The Transport Allowance being paid must neutralize the aforesaid increased effected during each year. Earlier CPRI had conveyance to carry/pickup staff the same has been stopped. CPRI provided maximum Rs. 300/- to people who are residing > 12 kms away from office to basis to law paid staff while the same is given on % basis to the High paid staff. Therefore, conveyance may be provided by CPRI with prescribed rate of RTO taking into account the real facts. Otherwise, the employees will be forced to spend their earned wages only to meet all these unexpected expenditures, which finally results in great hardships to run their families. Taking all these facts into consideration the 1st party union has put forth this demands.

7. Transfer Policy:

Employees of C & D Group should not be transferred to any out-station, under any circumstances whatsoever:

It is relevant to state at this stage that even in Government Sector, the employees who belongs to lower strata will not be normally disturbed and they will not be transferred to far-off places, as it would affect the entire family members. In fact, these employees will run their family with great hardship, as the wages earned by them is very meagre when compared to the wages of their superior officers. Hence, some relaxations is bound to be given to the employees who belong to the lower strata, to enable them to lead their life happily with their limited resources.

8. Uniforms:

Two pair of food quality uniform should be issued every year along with a paid of leather shoes and two pairs of cotton socks of reputed brand only.

9. Washing Allowance:

Washing allowance should be increased to Rs. 100/-.

This is required to maintain some discipline also. Many times, the financial condition of the employees will not permit them to wear decent clothes during working hours which may effect the reputation of the establishment. This practice of issuing uniforms and paying washing allowance is in force in most of the establishments. It should be one of the essential service condition, particularly to help the employee who gets meagre wages.

10. Bonus:

CPRI is a revenue earning organisation and hence it should declare 20% bonus per annum:

It is relevant to state at this stage that the bonus is being paid to all the employees of Central Government including defence, telephones, postal services, railways,

income tax, etc. Further the 2nd party management also is making profits during each year on account of the hard work of the workmen employed in them. Hence, the work force also must be treated as partner in the industry and hence they are entitled to get the bonus. This step on the part of the 2nd party management would instil a kind of confidence in the minds of all the employees and the same would create good spirit in the minds of each workman to contribute more to the development of the establishment.

11. Field Testing Allowance:

CPRI is earning revenue from commercial testing, both within the units and by way of field testing. The existing field testing allowance paid to the employees should be suitably enhanced.

12. Ministerial Staff:

The ministerial staff should be given the next high scale irrespective of vacancy at the time of promotion.

4. With the above averments in the claim statement it is submitted all demands are being legal and justified demands the II party which has got sufficient financial capacity to meet those demands the same are required to be implemented in the spirit of maintaining good industrial peace and harmony and prayed to pass an Award holding that the I Party Union is justified in all their demands and to direct the II Party to implement the same.

5. In the counter statement filed by the Senior Administrative Officer of the II Party, it is contended that the assertion by the I Party that it is a Registered Trade Union formed on 16.02.2003 registered under Trade Union Act, 1926 may be true but such a Union cannot be recognized by any statutory authority as the same is against the law and in that regard the I Party was clearly informed that no such trade unions could be formed except for Service Associations. It is further contended II party being an autonomous society under the Administrative Control of Ministry of Power, Government of India the ID Act is not applicable as it is neither an industry nor it is involved in any such activities in order to bring it into perview of industry as such it is incorrect as asserted by the I Party that all disputes between employees and II party will come under the perview of the RLC(C) since the appropriate government is central government. It is further contended the number of employees working in the II Party institute as on the date is 714 in number, the total number of members of the CPRIEU as seen from the Registration on 21.03.2003 was only 127. It is further contended the CPRI was established in 1960 at Bangalore and during 1963 at Bhopal under the Central Electricity Authority (CEA), a Technical Wing of Ministry of Power, Government of India which is

essentially functioning as a Regulatory body to administer the Central Electricity Act to achieve the performances and objection set out in the said act. It is further contended with a view to further stream line the CPRI for more efficient accomplishments of the objectives the Government of India through their Resolution No. 33(14)/74-Policy/EL 1 dated 18.12.1975 re-organised it into Autonomous Body (Society) and there after the employees who were government servants were given an option either to remain under Government Service or to come over under the CPRI Society in which case their service conditions will not be inferior to those available under the Central Government. It is further contended in view of the said fact it became necessary for the CPRI Society to adopt Service Conditions which is prevalent under the Central Government which *inter alia* includes the following aspects:

- a. The scales of pay adopted in the Institute conform exactly to the Central Pay Scales. Pay fixation Rules governed under FRSR Part-I. Bonus, Overtime Allowance is also paid to the employees under the Rules applicable to Central Government Employees.
- b. Leave Rules, Pension Rules, GPF Rules, Travelling Allowance, HRA, CCA rules are governed in the Institute as per the provision contained in CCS (Leave) Rules, 1972, CCS (Pension) Rules, 1972; GPF Rules, 1960; FRSR Part-I and Part-II respectively.
- c. The matters relating to Conduct, Discipline, Suspension, Appeals and Reviews are also regulated in the Institute in terms of CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965.
- d. The matter relating to formation of Service Associations falls under the subject of conduct and is governed by CCS (Regulation of Service Association) Rules, 1993.

6. It is further contended that the question of according recognition to service associations in CPRI was raised time and again right from it was converted into autonomous body and some of the employees had formed union with outsider as officer bearer and sought for recognition and in this connection the governing council of the II Party society at its third meeting held on 11.07.1978 opined that their bye-laws provide for right to strike, membership of offices etc., allowing them to take part in the political activities they are conflict with the CCS Conduct Rules, 1964 adopted by the Governing Council for its employees and on further deliberation on the subject the governing council decided only staff association duly constituted according to the government of India be recognised and a dialogue only with such staff associations matters relating to the service conditions and

only in the matter of the institute on the service matters and the said condition was made known to the employees from time to time and recently under circular dated 31.12.2004. It is further contended the council of Scientific Industrial Research (CSIR), New Delhi an autonomous society under the Ministry of Science and Technology which is having 44 laboratories under its control situated in different parts of the country have adopted CCS for recognition of Associations and decided they would not deal with the Unions/Associations which have not been formed and recognised under CCS (R&S) Rules. It is further contended under the circumstances effective grievances redressal mechanism is very much in existence in the II Party Institute. As such there is no real cause of action for the I Party to agitate such matter before this court or any other forum or court or authority and any grievance of any employees are to be settled under the frame work within the rules governing service conditions of employees of the Institute viz., CPRI (Service Conditions) Rules, 1989 or could be agitated before the court of law as has been done in many cases decided and pending before the Courts of Law.

7. Without prejudice to the above contention i.e. the II Party being not an Industry do not fall under the jurisdiction of this Court under the Industrial Disputes Act, 1947 with regard to the charter of demands it is stated as under:

1. **Implementation of 5th Pay Commission Scales**

The adoption of pay scales to the various posts in the Institutes is a policy decision, taken by the governing Council. Consequent to the implementation of 5th Pay Commission recommendation by Government of India, the Governing Council of CPRI also had revised the pay scales of the employees of the Institute by adopting the standard pay scales prescribed by 5th Pay Commission corresponding to the pre-revised scales of pay at its 41st meeting held on 28.11.1997 at New Delhi.

It is also pertinent to mention that some of the employees of the Institute have filed Writ Petition in the Honourable High Court of Karnataka (W P No. 195258/05 S-Res).

The promotional policy for the employees of the Institute are governed by CPRI (Pay, Recruitment & Promotion) Rules, 1989 duly formulated by the Governing Council after taking all relevant factors into account and career growth of each category of employees.

2. **On Assessment period for promotion:**

The Governing Council at its 62nd meeting held on 26.04.2007 provided an opportunity to Technical

Attendants Grade 5 completing 9 years of service to bring them under Technician Grade 4 through selection a duly constituted committee.

3. On Overtime Work.

The Service Conditions of the employees in the Institute is governed by CPRI (Service Conditions) Rules, 1989. In respect of the matter to Overtime Allowance, the rules and order applicable to the Central Government Employees shall be applicable to the employees of the Institute.

It is submitted that the demand for Payment of Overtime Allowance at twice the rates and to grant conveyance allowance to be provided during holidays is outside the scope of Government of India Rules on the subject. So far as the canteen facility is concerned the same are now extended on Saturdays also.

4. Medical Reimbursement:

The Service Conditions of the employees in the Institute is governed by CPRI (Service Conditions) Rules, 1989. In respect of the matter relating to medical reimbursement, the rules and orders applicable to the Central Government Employees are adopted and made applicable to the employees of the Institute.

The institute has adopted a scheme of Medical Reimbursement in the lines of Central Government Health Scheme (CGHS) and CS (Medical Attendance) Rules *vide* the decision of Governing Council at its 46th Meeting held at Bangalore on 26.05.2000. The Medical claim of the employees are being regulated accordingly.

5. Canteen Facility:

It is submitted that the Director General of the 2nd Party has constituted a Canteen Committee consisting of members representing different cadres of employees of the Institute to look into various aspects of the functioning of the Canteen quality and hygienic aspects of food being served in the canteen. A complaint register is also maintained in the canteen which is periodically reviewed for taking appropriate action.

6. Transport Allowance:

The Service Condition of the employees in the Institute is governed by CPRI (Service Condition) Rules, 1989. In respect of the matter relating to Transport Allowance, the rules and orders applicable to the Central Government Employees shall be applicable to the employees of the Institute.

The Institute has adopted rates of Transport Allowance in accordance with the Government of India orders on the subject *vide* the decision of the Governing Council at its 41st meeting held on 28.11.1997 at New Delhi.

7. Transfer Policy:

The matter of transfer of employees is an Administrative decision which is need based and its dependent on exigencies that arise from time to time.

8. Uniforms:

The Service Conditions in the Institute is governed by CPRI (Service Conditions) Rules, 1989. In respect of the matter relating to Uniforms, the rules and orders applicable to the Central Government Employees are made applicable to the employees of the Institute.

Two pair of uniforms is issued every year and one pair of shoes is issued once in $1\frac{1}{2}$ years as per rules.

9. Washing Allowance:

The Service Conditions of the employees in the Institute is governed by CPRI (Service Conditions) Rules, 1989. In respect of the matter relating to Washing Allowance, the Rules and Orders applicable to the Central Government Employees shall be applicable to the employees of the Institute.

10. Bonus:

The Service Conditions of the employees in the Institute is governed by CPRI (Service Conditions) Rules, 1989. In respect of the matter relating to Bonus, the rules and order applicable to the Central Government Employees shall be applicable to the Institute as per the Government of India. Accordingly, ad hoc-bonus to eligible employees is being disbursed from time to time.

11. Field Testing Allowance:

The Institute provides working lunch to employees while they are deputed to field assignments in remote areas *vide* the decision of the Governing Council of CPRI at 50th Meeting held at New Delhi on 26.02.2002.

12. Ministerial Staff:

The promotion in Ministerial Cadres is vacancy based with a provision to review the number of available posted in higher grade for promotion from time to time. Necessary re-allocation/restricting is done from time to time in order to ensure promotion to the Ministerial Employees of the Institute to a reasonable extent. The Petition itself says the demands are not legal. However the same are not in accordance with Rules governing the Service Rules of CPRI.

Thus it is contended there being no cause of action for this dispute and the one alleged is imaginary and made only to mislead and misuse the juridical process the reference is liable to be dismissed.

8. After completion of the pleadings since it was the case of charter of demand the I Party was being called upon to substantiate its case, on 02.07.2010 the counsel for I Party while filing the affidavit of General Secretary of

the I Party Union examining him on oath as WW 1 got exhibited Copy of Registration Certificate issued by the Registrar of Trade Union; Letters addressed to II party to the I party Union dated 24.07.2003, 15.09.2003 and 15.03.2004; list of charter of demands placed by the I party to the II party; letters by II party management to the conciliation officer dated 01.04.2004, 21.06.2004; conciliation notice dated 07.06.2004; letter of I party union to the letter of II party management dated 24.06.2004; Conciliation Report; letters written by the I party union to the Secretary to Government of Karnataka, labour Department dated 01.06.2005, 22.07.2005; order passed in WP No. 19949/2005 by Karnataka High Court, Annual reports pertaining to the II party management for the years 2003-2004 and Annual report for the year 2008-2009 as Ex W-1 to to Ex W-15 respectively and in his cross-examination for the II Party the Book containing Memorandum of Association, Rules and Regulation, bye laws, working rule No. 1 and Rule No. 2 as amended upto 16.06.1989 got exhibited as Ex M-1. After cross-examination of WW 1, the General Secretary of I Party Union he filed the affidavit of Sh. P.C. Philip, Joint Secretary of I Party Union and examined him on oath as WW 2 and got exhibited Annual Report of CPRI for the year 2009-2010 and Book containing Memorandum of Association, Rules and Regulations, Bye-laws, Working Rule No. 1 and Working Rule No. 2 of the CPRI Society (amended upto 16.6.1989) as Ex W-16 and Ex W-17 respectively. In his cross-examination for the management Salary Particulars for the month of June 2011 pertaining to him got exhibited as Ex M-2.

9. *Inter alia*, the learned counsel appearing for the II Party on 17.08.2011 while filing the affidavit of Chief Administrative Officer of the II Party examining him on oath as MW 1 got exhibited the certified copy of the orders passed in W P No. 19528/2005 (S-RES) dated 14.06.2011; order relating to non-production bonus dated 06.10.2010 accompanied by Office Memorandum dated 22.09.2010 as Ex M-3 to Ex M-5 respectively. In his cross-examination for the I Party the Photostat copies of the Revision of Test Tariffs issued on 30.09.2009 by the Chief Accounts Officer, CPRI and Office Order pertaining to transfer of two officials dated 20.07.2010 got exhibited as Ex W-18 and Ex W-19 respectively. After cross-examination of the MW 1, the counsel for II party while filing the affidavit of Sh. N Murugesan, Director General of CPRI, Bangalore on 11.11.2011 examining him on oath as MW 2 got exhibited Photostat copy of IEEMA Journal Article; Roving calendar Technical Programme; Seminars/Workshops conducted by CPRI; International Conference on Power Systems; CPRI News; Centre for Collaborative and Advance Research Borchure; CPRI Journal; List of Patents; Research Contingency Projects; Research Scheme on Power; RSOP Project Proposals; Membership of CPRI Officers in International Committees and Release Order of Grant in Aid as Ex M-20 to Ex M-32 respectively (since before exhibiting Ex M-20 to Ex M-32 the last document exhibited for the II Party was Ex M-5 these documents ought to

have been exhibited as Ex M-6 to Ex M-18 but inadvertently they have been exhibited as Ex M-20 to Ex M-32 respectively). In his cross-examination for the I Party book published as CPRI News; Photostat copies of the Office Order issued by the Chief Administrative Officer (SG) dated 30.04.1992; Circulars issued by Joint Director (Marketing), planning division of CPRI dated 24.05.2007; 27.05.2009; Circular issued by the HOD (Administrative and Finance) CPRI 02.1.2010; circular issued by the Chief Administrative Officer dated 07.09.2011; manual report for the year 2010-2011 have been got exhibited as Ex W-20 to Ex W-26 respectively.

10. With the above pleadings, oral and documentary evidence brought on record by both the sides the arguments addressed by the authorised representative of the I Party union and the learned advocate appearing for the II Party were heard.

11. Sh. T.S. Anatharam, Officer, CITU representing the I Party in his arguments while taking me through the pleadings very fairly submitted that in view of specific contention taken by the II Party that it is not an industry and that the I Party Union has no locus standi to represent the whole body of employees of the CPRI, before proceeding to consider whether the charter of demands put forth by the I Party union are legal and justified, it has to be considered:

1. Whether CPRI is a Industry as defined under Section 2(j) of ID Act to bring it under the jurisdiction of the Central Government Industrial Tribunal?
2. Whether I Party Union has a locus standi to put forth such charter of demands?

and taking me through the Audit Reports produced at Ex W-16 and Ex W-26 and the admission given by MW 1 that CPRI charges for testing and certification and generates revenue and the admission given by MW 2 in his cross-examination that CPRI is issuing Type Test Certificate to all the Electrical Equipment manufacturers for meeting international standard for both public and private sector people in the industry both from India and Abroad and that they do charge for testing urged it amounts to trade and business as such the CPRI has to be held as an Industry. In support of his arguments he who mainly relied on the decision in the case of Central Machine Tools Institute vs. Assistant Labour Commissioner, reported in 1979 (I) LLJP (Kar) and in the case of Bangalore Water Supply Board vs. A. Rajappa reported in 1978 (I) LLJ 349 (SC) also referred to the decisions in KBR Parimala and another vs. Director of Postal Services, Trivandrum reported in 1979 (II) LLJP. 176 (Hon'ble High Court of Kerala); A. Kajendra vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Chennai & ors. Reported in 2011 LLR 438 (Hon'ble High Court of Madras); State of Gujarat and another vs. Ramabhai Lalabhai reported in 2011(i) LLJ Pg. 637 (Gujarat

High Court); Karnani Properties Ltd., vs. State of West Bengal & ors. Reported in 1994 III LLJ (Suppl) Pg. 378; Central Council for Research in Ayurveda & Siddha vs. Central Government Industrial Tribunal, Jaipur & Anr. Reported in 2011 LLR 469 (Rajasthan High Court); Indian Council of Agricultural Research (ICAR) and another vs. Dduryodhan Himaman Ingole, Nagpur & other reported in 2011 IV LLJ Pg. 410 (Bombay); Agricultural Produce Market Committee and others vs. Ashok Harakuni and others reported in 2000 (II) LLJ Pg. 1382; Physical Research Laboratory vs. K.G. Sharma reported in 1997 (II) LLJ Pg. 625 (SC) and Nirchiliya and other vs. Management of Safire Theatre, madras and another reported in 1991 (I) LLJ Pg. 111.

12. Inter alia, the learned advocate appearing for the II Party urged that the CPRI society being established on the recommendation of the Planning Committee for Power Engineering Research Institute which stressed need for taking up the power research in the country and recommended to set up power research at Bangalore and switch gear testing and development at Bhopal under the United Nations Special Fund for the discharge of the functions as under:

- i. Undertake investigations and research on various problems connected with the development and utilization of energy resources in India in a rational and economical manner.
- ii. Conduct such studies as would lead to technical efficiency and economy in the various aspects of the power industry.
- iii. Develop, through research, suitable types and designs of equipment for utilizing indigenous material resources for the rapid growth of power supply facilities.
- iv. Undertake research towards the promotion of the manufacturing potential of electrical equipment in India to meet the rapidly increasing demand for power from large scale industrial and agricultural programme.

which is elaborated in the memorandum of association which is produced at Ex M-1 by the II Party and Ex W-17 by the I Party as such it is purely a research and development organization as such it cannot be held as an Industry to bring under the perview of jurisdiction of ID Act, 1947 and in support of his arguments he cited the decision in the case of B Vijayakumari Pillai, Bangalore vs. Management of Indian Institute of Science reported in 2012 (3) LLJ 627 (Kar) and urged to reject the reference. He also urged that since the CPRI has adopted the CCA rules and the CCS (Pension) Rules, 1972, GPF Rules 1960 and CCS (Conduct) Rules, 1964 and fixed the salary of the employees as per the Central Pay Scales, few employees

who have formed the Trade Union cannot bring the institute under the perview of ID Act 1947 for meeting their demands.

13. In view of the facts narrated by me above the points that arises for my consideration in disposal of this reference are:

1. Whether CPRI is an Industry as defined under Section 2(j) of the ID Act?
2. If yes, whether the I Party Union comprising of 127 members out of 714 employees of the II Party has a locus standi to put forth such demands?
3. If yes, whether I Party demonstrate its all demands or any of them are being legal and justified?
4. What Order?

14. On appreciation of the pleadings oral and documentary evidence brought on record by the respective parties with the arguments canvassed by their learned advocates and the citations relied upon by them my findings on Point No. 1 is in the Negative and 2 and 3 as does not survive for consideration and No. 4 as per final order for the following reasons:

REASONS

15. **Point No. 1:** Since whether CPRI is an Industry or not goes to the root of the case, I have taken up this point for consideration at the first instance. Section 2 (j) of the ID Act, 1947 defines Industry to be any Business, Trade, Undertaking, Manufacture or calling of employers includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. As per the leading decision of the Supreme Court on the point in the case of Bangalore Water Supply and Sewage Board vs. A. Rajappa reported in 1978 SCC Cases (L&S) 215 it is held that "non-existence of profit making motive or any other gainful object is an irrelevant consideration in determining whether an enterprise is an Industry or not and that most decisive test for such purpose is the nature of the activity with special emphasis on the employer and employee relationship and if the enterprise is trade or business it does not cease to be so because philanthropy or charity is the primary object." Therefore, whether the CPRI earns profit or not from its activities is not relevant and the objective for which it is established and is carrying on being relevant we have to see the objective and activities of the CPRI from the Memorandum of Association on which both I Party and II Party rely upon. The I Party has produced photocopy of Memorandum of association, rules & regulations, Bye-laws, Working Rule No. 1 & Working Rule No. 2 of the CPRI society (amended upto 16.6.1989) at Ex @/-17 where as the II Party has produced the same at Ex M-1 which reads as under:

The Objectives for which the society is established are:—

Technical:

- (i) Function as a National Power Research Organisation for undertaking and/or sponsoring research and development projects in the fields of generation, transmission, distribution and operation of electricity supply systems.
- (ii) Provide necessary centralized research and testing facilities for evaluation of electrical materials and performance of power equipments.
- (iii) Serve as a national testing and certification Authority for the purpose of certification of rating and performance to ensure availability of equipment of adequate quality for use under conditions prevalent in Indian Power Systems.
- (iv) Act as an apex body for initiating and co-ordinating the R & D in the field of electric power.
- (v) Evolve criteria for standards of various equipments for operation under Indian conditions and effectively participate in formulation of national standard specifications.
- (vi) Identify problems in the areas of basic and oriented basic research and arrange such studies in national academic institutions.
- (vii) Co-ordinate R & D activities in the various State Electricity Boards and maintain liaison with other Institutions engaged in research connected with power systems and/or power equipments.
- (viii) Collect information and maintain documentation in the field of power engineering and prepare, print and publish any paper, periodical or report in furtherance of the objects of the Society.
- (ix) Establish, maintain and manage laboratories, workshops and other facilities for furthering scientific and technological research and conduct experiments for exploiting the invention or discoveries to the cause of power development in the country.
- (x) Enter into agreement with any enterprise or institutions or person or persons and provide funds to them to carry out research and development programme of the Society.

Financial

- (xi) Accept grants of money and other assistance from Govt. of India and other sources, Indian or

foreign or enter into agreement with them with a view to promote the objectives of the Society provided that in respect of foreign resources prior approval of the Government of India is obtained.

- (xii) Acquire by gift or purchase or exchange or lease or hire or otherwise, howsoever, any lands, buildings situated in India, equipment and any other properties movable or immovable for the furtherance of the objectives of the Society and construct or alter any building which may be necessary for the Society.
- (xiii) Sell or lease or transfer or exchange or mortgage or dispute of or otherwise deal with any properties whatever belongings of the Society, provided that prior approval in writing of the Central Government is obtained.
- (xiv) Draw, make, accept or endorse and discount cheques, notes or other negotiable instruments.
- (xv) Invest the funds or money of the Society not immediately required in any securities or in such manner as from time to time to be determined by the Governing Council.

Administrative

- (xvi) Establish and award research studentships, fellowships.
- (xvii) Retain or employ professional or technical advisors, consultants or workers to further the object of the Society and to pay thereof such honorarium, fees or remuneration as may be thought expedient.
- (xviii) Negotiate and enter into contracts on behalf of the Society and vary or rescind such contracts.
- (xix) Create administrative, technical, ministerial and other posts under the Society and to make appointments thereto in accordance with the rules and regulations of the Society.
- (xx) Take appropriate measures for training and welfare of the employees.
- (xxi) Make rules and regulations and bye-laws for the conduct of the affairs of the Society and to add, to amend, to vary or rescind them from time to time with the approval of the Government of India.
- (xxii) Do all such other lawful acts, deeds or things as are incidental or conducive to the attainment of any of the above objects.

(xxiii) Maintain a research and reference Library.

16. The plane reading of the objectives for which the II Party is established makes it clear that it is established to aid the government for the purpose of research in the field of power and development in the fields of generation, distribution of electricity supply systems and in order to achieve this object it undertakes tests and certification and issue Type Test Certificate to all the Electrical Equipment manufacturers for meeting international standard for both public and private sector people in the industry both from India and Abroad and charge for the same and thereby makes some earnings and besides the funds it gets from the Government and other sources makes the maintenance. On this aspect of the case in the claim statement filed by the General Secretary of the I Party Union it has been clearly stated in Para 3 the II Party being an Autonomous Research and Development Organisation under the Administrative Control of Ministry of Power, Government of India which reads as under:

"It is submitted that the 2nd party management is an autonomous research and development organisation and the administrative control of Ministry of Power, Government of India".

The same is even reiterated in the affidavit, filled by the General Secretary in lieu of his evidence on 02.07.2010 which reads as under:

"I state that the 2nd party management is an autonomous research and development organisation and the administrative control of Ministry of Power, Government of India".

Only in his cross-examination on this aspect when he was cross-examined by the learned advocate appearing for the II Party he volunteers and states that till 1978 only testing and certification is being done and from 1995 onwards only 5% of the research work is carried and thereafter in the evidence of second witness WW 2 the Joint Secretary an attempt is made to show that the CPRI is involved in Trade and Business by earning revenue from Certification of Type Test Certificate to all the Electrical Equipment manufacturers for meeting international standard for both public and private sector people in the industry both from India and Abroad and charge for the same. At the outset, I may say in the absence of the pleading or contrary to the pleading any amount of evidence given during the course of trial is of no avail to a party. Even otherwise, it is clear from the evidence brought on record the certification and testing of the equipments by the II Party being to aid the government in the research and development in the field of power it is in the nature of sovereign function and it cannot be said that the CPRI is involved in trade and business to fall under Section 2 (i) of the ID Act, 1947 wherein Industry is defined. Therefore, in my considered view only because the II Party is earning

some revenue from Certification of Type Test Certificate to all the Electrical Equipment manufacturers for meeting international standard for both public and private sector people in the industry both from India and Abroad it cannot be held as an Industry as defined under Section 2 (j) of ID Act, 1947 and it is an organisation purely involved in research and development in the field of Power, the attempt of the I Party Union to bring it under the perview of ID Act, 1947 is a futile attempt. In the result, I have arrived at conclusion the CPRI is not an Industry as defined under Section 2 (j) of the ID Act, 1947 to come under the perview of the Industrial Dispute Act, 1947 and the jurisdiction of this tribunal. Accordingly, I answer the Point No. 1 in the 'NAGATIVE'.

17. **Point No. 2, 3 and 4**—In view of my finding on Point No. 1 since II Party is held as not an Industry and it cannot be brought under the perview of the ID Act, 1947 and the jurisdiction of this court/tribunal there is no necessity to consider the Points 2 and 3. When the II Party is held to be not an Industry this court/tribunal since loses jurisdiction to consider on merits *i.e.* on the Charter of Demands put forward by the I Party Union, I feel that this court cannot consider the same. Accordingly, I am of the view that Point No. 2 and 3 in view of my finding on Point No. 1 do not survive for consideration and the reference is liable to be rejected. Accordingly, I pass the following Order.

ORDER

The reference is rejected having come to the conclusion that the II party is Not an Industry as defined under Section 2 (j) of the Industrial Disputes Act, 1947 to fall under the jurisdiction of this Tribunal/court. Under the circumstances the parties are directed to bear their own costs.

Sd/-
(S.N. NAVALGUND)
Presiding Officer

ANNEXURE-I

Witness examined for the I Party:

WW 1	- Sh. K. Channaiah, General Secretary of I Party Union
WW 2	- Sh. P.C. Philip, Joint Secretary of I Party Union

Documents exhibited by I Party:

Ex W - 1	- Copy of Registration Certificate issued by the Registrar of Trade Union.
Ex W - 2	- Letters addressed to II Party to the I Party Union dated 24.07.2003
Ex W - 3	- Letters addressed to II Party to the I Party Union dated 15.09.2003

Ex W - 4	- Letters addressed to II Party to the I Party Union dated 15.03.2004	Ex M - 2	- Salary particulars pertaining to me for the month of June 2011
Ex W - 5	- List of charter of demands placed by the I Party to the II Party	Ex M - 3	- Orders passed in Writ Petition No. 19528/2005 (S-RES) dated 14.06.2011
Ex W - 6	- Letters by II Party management to the conciliation officer dated 01.04.2004	Ex M - 4	- Order relating to Non-production bonus dated 06.10.2010 accompanied by Office Memorandum dated 22.09.2010.
Ex W - 7	- Letters by II Party management to the conciliation officer dated 21.06.2004	Ex M - 5	- Auditors Report dated 02.07.2011
Ex W - 8	- Conciliation notice dated 07.06.2004	Ex M - 20	- Photostat copy of IEEMA Journal Article
Ex W - 9	- Letter of I Party union to the letter of II Party management dated 24.06.2004	Ex M - 21	- Roving Calender Technical Programme
Ex W - 10	- Conciliation Report	Ex M - 22	- Seminars/Workshops conducted by CPRI
Ex W - 11	- Letters written by the I Party Union to the Secretary to Government of Karnataka, Labour Department dated 01.06.2005	Ex M - 23	- International Conference on Power Systems
Ex W - 12	- Letters written by the I Party union to the Secretary to Government of Karnataka, Labour Department dated 22.07.2005	Ex M - 24	- CPRI News
Ex W - 13	- Order passed in WP No. 19949/2005 by Karnataka High Court	Ex M - 25	- Center for Collaborative and Advance Research brochure
Ex W - 14	- Annual Reports pertaining to the II Party management for the years 2003-2004	Ex M - 26	- CPRI Journal
Ex W - 15	- Annual Report for the year 2008-2009	Ex M - 27	- List of Patents
Ex W - 16	- Annual Report of CPRI for the year 2009-2010	Ex M - 28	- Research Contingency Projects
Ex W - 17	- Copy of the bye-law along with Memorandum of Association, Rules and Regulations, working Rule No. 1 & 2 of CPRI	Ex M - 29	- Research Scheme of Power
Ex W - 18	- Photostat copy of Revision of Test Tariffs issued on 30.09.2009 by the Chief Accounts Officer	Ex M - 30	- RSOP Project Proposals
Ex W - 19	- Photostat copy of the Office Order pertaining to transfer of two officials	Ex M - 31	- Membership of CPRI Officers in International Committees
		Ex M - 32	- Release Order of Grant in Aid and Postal cover dispatched on 26.06.2008 served on 02.07.2008

NOTE : 13 Documents marked after marking Ex M-1 to Ex M-5 which ought to have been exhibited as Ex-M-6 to Ex M-18 inadvertently exhibited as Ex M-20 to Ex M-32

Sd/-
(S.N. NAVALGUND)
Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का आ 832.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की अंग 17 के अनुसर मे केन्द्रीय सरकार डल्लू से एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नामानुसार के पंचाट (आईडी संख्या 70/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्रत हुआ था।

[सं. एल-22012/16/2002-आई आर (सीएम-II)]
बीएम पटनायक
अनुभाग अधिकारी

New Delhi, the 11th March, 2013

S.O.—832 In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 70/2002 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Rayatwari Sub Area of Western Coalfields Ltd. and their workmen, received by the Central Government on 11/03/2013

[No. L-22012/16/2002-IR(CM-II)]
B.M. PATNAIK,
Desk Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR
COURT, NAGPUR**

Case No. CGIT/NGP/70/2002 Dated 27.02.2013

Party No. 1 : The Sub Area Manager,

Rayatwari Sub Area of WCL

Post-Rayatwari, Distt. Chandrapur (MS)

Versus

Party No. 2 : Shri Jagatpal Biru through

I.R.K.K.K.S., Chandrapur Area,
Niraj Niwas Mahakali Colliery
PO. & Distt. Chandrapur

AWARD

(Dated: 27th February, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of and their workman, Shri Jagatpal Biru, for adjudication, as per letter No. L-22012/16/2002-IR (CM-II) dated 15.07.2002, with the following schedule:—

"Whether the action of the management in relation to Rayatwari Sub Area of under Chandrapur Area of Western Coalfields Ltd. in fixing the pay of Shri Jagatpal Biru, Loader at Midpoint of category-I vide letter No. 926 dated 09.09.1997 which resulted in the reduction of pay is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were

noticed to file their respective statement of claim and written statement and accordingly, the union, "The Indira Rashtriya Koyla Kamgar Sangh" ("the union" in short) filed the statement of claim on behalf of the workman, Shri Jagatpal Biru, ("the workman" in short), and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented by the union in the statement of claim is that it (union) is a registered union, under Trade Unions Act, 1926 and party No. 1 is a government company owned and controlled by the Central Government and is a "state" under Article 12 of the constitution of India and the workman was appointed as a loader on 22.04.1979 and National Coal Wage Agreements ("the NCWAs" in short) are binding on the party No. 1 and neither the party No. 1 nor any union is competent to resort to change the service conditions and wage structures etc, as laid down in the NCWAs, unilaterally and also adversely and the NCWAs cover the wage structure including dearness allowances, fitment in revised scale of pay, fringe benefits, service conditions and other allied matters including welfare, safety measure and cover all the employees of coal industry and in terms of NCWA-V, all the workmen were given minimum benefit of Rs. 235/- per month inclusive of interim relief over and above the wages prescribed in NCWA-IV and the loaders were placed in group V-A and revised basic pay and work load were fixed from 01.07.1991, per day at the rate of Rs. 88.93 p for workload of 100 cft and Rs. 104.93 for workload of 118 cft and besides the same, the loaders were also entitled to special piece rate allowance ("the SPRA" in short) @Rs. 2.12 per day and the workman was granted additional SPRA of Rs. 2.12 paise w.e.f. 01.07.1992 *vide* office order No. 1736 dated 4/6.07.1993 of Dy CME/Manager, Mahakali colliery and besides the NCWAs, the service conditions of the employees of party No. 1 are governed by the certified standing order.

The further case of the workman as presented by the union in that the workman met with an accident during and in course of his employment in the underground Mine, Mahakali Colliery on 07.06.1992, in the first shift and sustained serious injuries and he was admitted in the Area Hospital of WCL, Chandrapur for two weeks for treatment and as the same could not give any relief, he was again admitted in the said hospital for about four weeks and thereafter, he was under rest, under medical advice and he was also referred to Government Medical College, Nagpur for treatment, for the injuries sustained by him, *vide* letter dated 16.01.1993 of Manager, Mahakali colliery and as per letter dated 13.06.1993 of the Deputy CME/Manager, Mahakali colliery, he was directed to appear before the Apex Medical Board at WCL headquarters Dispensary on 15.06.1993 and accordingly, he appeared before the Apex

Medical Board and the Board recommended to provide him surface duty not involving carrying of heavy weight and running about, holding his case to be a case of chronic PID and accordingly, he was given surface duty and his group wages, SPRA and other benefits as admissible to him in accordance with the terms and conditions of NCWA-V were protected and given to him, which can be found out from him wage slip for the month of May, 1997 and *vide* order dated 3/5.07.1997 of the Personnel Manager (MP) WCL (HQ), Nagpur, the workman and some other were converted from piece rated to time rated workmen and the Suptd. of Mines/Manager, Mahakali Colliery *vide* office order No. 615 dated 14/17.07.1997 in most arbitrarily and illegally, placed him in category-I and also further ordered that wages would be fixed in accordance with the prevailing system and he was placed in category-I with basic of Rs. 72.96 per day, by reducing the basic from Rs. 104.93 per day and stopped the payment of SPRA of Rs. 27.06 P per day from the month of July, 1997 and thus, the condition of services and wages were changed arbitrarily and illegally and the workman approached the management personally and submitted an application dated 12.08.1997 to protect his wages, but party No. 1 neither considered his appeals nor replied to the same.

The further case as presented by the union on behalf of the workman is that a settlement was arrived at as per section 12(1) of the Act, between "R.K.K.M.S. Union" and the Party No. 1 before the Regional Labour Commissioner, (Central) Nagpur on 02.11.1992 and according to para 1.3 of the said settlement, "That the management shall on conversion from P.R. to T.R./M.R. will fully protect the group wages including SPRA wherever is applicable. The basic pay so fixed in the TR/MR category grade if exceeds the maximum of the category/grade, the balance will be treated as personal pay to the person concerned which shall be adjusted in the subsequent revision of pay/ promotion. This decision shall be effective from 01.01.1992." and in para 1.4 of the said settlement, it is mentioned that, "The Management will convert all pending cases of P.R. workers, who are working in TR/MR category/ grade for more than 190/240 days in a calendar year *w.e.f.* 01.01.1992. The management further agreed that such P.R. worker will get group wages and SPRA *w.e.f.* 01.01.1992 if they, have worked in TR/MR category/grade. It is further agreed that after conversion in TR/MR category the person concerned get the increments of TR/MR category/grade as the case may be." And therefore, the action of the party No. 1 in not protecting his wages is illegal and amounts to change of his service condition. It is also pleaded by the workman that Clause 21.01 of the certified standing order provides that "workman may be transferred due to exigencies of work from one coal mine to another or from

one establishment, department/section to another within the same company or same holding company provided the pay, grade and other conditions of service including continuity of service of the workman are not adversely affected by such transfer and a decision was taken by the Sub-Area Manager of Hindusthan Lalpath underground Sub-Area on 07.09.1998 that the basic and SPRA of Loader, whether given option or not would be protected and the decision so taken was circulated *vide* letter No. 517 dated 10.09.1998 of Personnel Manager, Hindusthan Lalpath underground sub-area and office order No. 2676 dated 10.02.2000 was issued by the Dy. Chief Personnel Manager, WCL, Chandrapur Area, with the approval of the competent authority to give protection of the basic wages of all employees of Chandrapur Area, irrespective of degradation/reduction in post and category and management of WCL, Chandrapur Area gave protection of group wages and SPRA in other cases of loaders similarly situated like him, including Shri Raneswar Yadav, Md. Riyaz and Sheikh Nabi Sheikh Chand (Tub Munshi) and therefore, the action of the party No. 1 in not giving him protection of his basic and SPRA is discriminating and the settlement dated 02.11.1992 is a tripartite settlement and the same has become the service condition of the employees working with the employer and for change of service condition, it is necessary for the employer to give notice under section 9A of the Act, but in his case, no such notice was given and therefore, the action of party No. 1 is illegal and the workman is entitled for protection of his basic wages and SPRA from the month of July, 1997, annual increment and all consequential benefits.

3. The party No. 1 in their written statement have pleaded *inter-alia* that the workman received injury while on duty, on 07.06.1992, in the underground Mine of Mahakali colliery and for his injury, he was treated in the company hospital and finally referred to the Apex Medical Board, for assessment of his disability and the workman appeared before the Medical Board on 15.06.1993 and the Medical Board found him fit for surface duty not involving carrying of any weight or running about and based on the recommendation of the Medical Board, he was deployed as category-I Mazdoor as an interim arrangement till regular full time rated job was available to adjust him against that post and according to the extent Rules and practice, during such interim arrangement, he was paid group wages of piece rated loader and since such interim arrangement could not be continued for unlimited period, his case was referred to headquarters for permanent absorption in the category-I post in the year in 1997 and the headquarters approved his permanent absorption in Category-I post especially when he had also completed 240 days in that post and while fixing the wages of the workman in category I as per policy decision of the company arrived at by an

agreement on 30.10.1995, his pay was fixed at the midpoint of category-I and there was no breach of any law, rules and service conditions and they are following the policy of rehabilitation of employees declared permanently disabled for the normal job due to accident on humanitarian ground and such cases, which are dealt on humanitarian grounds cannot be compared with others and they have not brought about any change in the service condition or the wage structure as fixed by JBCCI (NCWAs) and office order No. 615 dated 14/17.07.1987 was issued in accordance with the norms and practice followed in the company and the same is neither arbitrary nor illegal and as there was no valid grounds to consider the representations of the workman, they did not concede to the demand and as there was no merit in the demand of the union, they did not agree to settle the case in the conciliation.

It is further pleaded by the party No. 1 that the contents of the settlement dated 02.11.1992 are matters of interpretations and have to read with its modification *vide* agreement dated 31.10.1995 and the workman is not entitled for any relief.

4. Besides placing reliance on documentary evidence, both the parties led oral evidence in support of their respective claims. The workman examined himself as a witness in support of his claim and reiterated the facts mentioned in the statement of claim in his examination in chief, which is on affidavit. In his cross-examination, the workman has stated that he was medically examined by the Medical Board and he was found not fit to work as a loader and the Medical Board recommended to engage him on surface work and thereafter, he was engaged on surface work and at present, he is working as a chowkidar and wages of a loader was paid to him, so long he was in the injury list and when he was given appointment permanently in time rate, wages of time rate category I was paid to him.

5. Besides the workman, one Shri Dinesh Pandurang Telang has been examined as witness on behalf of the workman. His evidence is in the line of the stands taken by the workman in the statement of claim.

Witness, Dinesh Pandurang Telang in his cross-examination has stated that as the workman was found unfit to work as a Loader, after his medical examination by the Medical Board, he was given light work of a general Mazdoor category-I, on surface and the settlement dated 02.11.1992 was modified by a settlement dated 31.10.1995 arrived at by the management and the union, RKKMS and the settlement dated 31.10.1995 is still binding on the workers of WCL.

6. One Shri Naresh Bahadur Singh has been examined as a witness by party No. 1, whose evidence is in the line of the stands taken by the party No. 1 in the written statement.

In his cross-examination, this witness has stated that as the workman was injured, while working underground and was not in a position to work in the underground as a loader, management gave him alternative work on surface.

7. During the course of the argument, learned advocates for the parties reiterated the contentions made in their respective statement of claim and written statement.

8. Before delving into the merit of the matter I think it necessary to mention about the admitted facts, which are necessary to decide the issue in question.

It is the admitted case of the parties that the workman was working as a loader in the underground of Mahakali colliery and he met with an accident during and in course of his employment in the underground mine, in the first shift of 07.06.1992 and was injured and he was treated for receiving such injuries in the Area Hospital, Chandrapur of WCL and also in the Government Medical College Hospital, Nagpur, being referred and the workman was examined by the Apex Medical Board on 15.06.1993 and was recommended by the said Medical Board for surface duty, not involving carrying of heavy weight and running around and as per the suggestion of the Medical Board, the workman was given surface duty as category-I Mazdoor as an interim arrangement and during such interim arrangement, he was paid group wages of piece rated loaders. It is also not disputed that on completion of 240 days of work on surface, the workman was permanently absorbed in category-I post, with the approval of the competent authority and his pay was fixed at the midpoint of cat-I and his basic pay with SPRA as a loader was not protected.

It is also admitted by the parties that even though, the workman is not a member of the RKKMS union, the tripartite settlement signed by the management of WCL with RKKMS union before the Regional Labour Commissioner, Nagpur on 02.11.1992 with its modification *vide* agreement dated 1.10.1995 is applicable to the workman and both the parties are bound by the settlement.

9. On perusal of the settlement dated 02.11.1992, it is found that clause 1.3 of the said settlement says that,

"That the management shall on conversion from PR to TR/MR will fully protect the group wages including SPRA wherever applicable. The basic pay so fixed in the TR/MR category/grade is exceeds the maximum of the category/grade, the balance will be treated as personnel pay to the person concern which shall be adjusted in the subsequent revision of pay/promotion. This decision shall effective from 01.01.1992.

The terms of the above settlement was modified by the terms of settlement dated 31.10.1995. According to the new terms of settlement, "all such piece rated workers who have given or may give option for time rated/monthly

rated jobs or incase of their selection through internal notification for any time rated/monthly rated jobs, will be fixed in the middle of commensurate category for which they opt in time rated only and no personal pay will be allowed w.e.f. 01.11.1995. Clause 5 of the settlement dated 31.10.1995 says that such piece rated workers who may be put in time rated/monthly rated in future by managerial decisions *i.e.* without seeking option for time rated/monthly rated or without going through the selection process against internal notification for time rated/monthly rated, will continue to get protection of piece rated wages. Such piece rated workers who come to TR as per option given by them will not get this benefit.

In this case, admittedly, the option of the workman has not been taken for his posting as time rated worker. The posting of the workman in time rated therefore can be said to be managerial decision. So, as per clause 5 of the settlement dated 31.10.1995, the workman is entitled for protection of piece rated wages. The submissions made by the learned advocate for the management that the obtaining of option from the workman for alternative job on surface would have meant only an empty formality has no force at all. Hence, it is ordered:—

ORDER

The action of the management in relation to Rayatwari Sub Area of under Chandrapur Area of Western Coalfields Ltd. in fixing the pay of Shri Jagatpal Biru, Loader at midpoint of category-I vide letter no. 926 dated 09.09.1997 which resulted in the reduction of pay is illegal and unjustified. The workman is entitled for protection of his group VA wages from July, 1997 and he is also entitled to get all the differential of wages and other consequential benefits from July, 1997.

Sd/-

J.P. CHAND, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 833.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 115/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं एल-22012/421/1998-आई आर (सी एम-II)]

बी एम पटनायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 833.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 115/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL their workman, which was received by the Central Government on 11/03/2013.

[No. L-22012/421/1998-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 115 OF 1999

PARTIES : The management of North Searsole Colliery,
M/s ECL, Burdwan (WB)

Vs.

The Org. Secy., CMS, Asansol (W.B.)

REPRESENTATIVES:

For the management : Sri P.K. Das, Ld. Advocate

For the union (Workman) : None

INDUSTRY: COAL STATE : WEST BENGAL

Dated - 13.02.13

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/421/98-I.R.(CM-II) dated 30.07.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of North Searsole Colliery in denying regularisation/promotion to the post of Magazine in charge and in denying the higher wages to Sh. Subir Kumar Chowdhury for performing his duties in the higher post for about four years is justified? If not, to what relief the workman is entitled?"

Having received the Order of Letter No. L-22012/421/98-I.R.(CM-II) dated 30.07.1999 of the above said reference from the Govt. of India, Ministry of Labour,

New Delhi for adjudication of the dispute, a reference case No. 115 of 1999 was registered on 18.09.1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the workman is neither appearing nor taking any step since 03.04.2007 despite registered notices. Several opportunities were given but of no effect. It seems that the workman is now no more interested to proceed with the case further. The case is also too old—1999. As such, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का अ — 834 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 79/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं एल-22012/3/2000-आई आर (सीएम-II)]

बीएम पटनायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. — 834 In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL their workman, which was received by the Central Government on 11/03/2013.

[No. L-22012/3/2000-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 79 OF 2000

Parties : The management of Bhanora Colliery,
M/s. ECL, Burdwan (WB)

Vs.

The Gen. Secy., WBCSS, Asansol (W.B.)

Representatives:

For the management : None

For the union (Workman) : None

INDUSTRY: COAL STATE : WEST
BENGAL

Dated-12.02.13

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/3/2000-I.R.(CM-II) dated 08.08.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Bhanora West Block Colliery under M/s. Eastern Coalfields Ltd. in not regularising Sh. Mukhlal Singh as U.G. Trammer (TR) is justified? If not, to what relief the workman is entitled?"

Having received the Order of Letter No. L-22012/3/2000-I.R.(CM-II) dated 08.08.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 79 of 2000 was registered on 06.09.2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the workman is neither appearing nor taking any step since 2010 despite registered notices. Several opportunities were given but of no effect. It seems that the workman is now no more interested to proceed with the case further. The case is also too old—2000. As such, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

का आ 835.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 36/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं एल-22012/266/2003-आई आर (सीएम-II)]

बीएम० पटनायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 835.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Nakrakonda Colliery, Bankola Area, M/s. ECL, and their workman, received by the Central Government on 11/03/2013.

[No. L-22012/266/2003-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL**

Present : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 36 OF 2004

Parties : The management of Nakrakonda Colliery under Bankola Area of M/s. ECL, Burdwan

Vs.

The Gen. Secy., KMC, Asansol (WB)

Representatives:

For the management : SHRI P.K. Goswami,
Ld. Advocate

For the union (Workman): Shri Rakesh Kumar, Ld.
Representative

INDUSTRY: COAL

STATE : WEST
BENGAL

Dated-08.02.13

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/266/2003-IR(CM-II) dated 23.06.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Nakrakonda Colliery under Bankola Area of M/s. Eastern Coalfields Limited, in dismissing Shri Joydev Bouri *w.e.f.* 18.01.1997 is legal and justified? If not, what relief is the workman entitled?"

Having received the Order of Letter No. L-22012/266/2003-IR(CM-II) dated 23.06.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 36 of 2004 was registered on 05.07.2004 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

The workman Joydev Bouri, U.G Loader, Nakrakonda Colliery under Bankola Area of M/s E.C.L., was found unauthorized absent from 26.07.96 to 26.09.96 and a domestic enquiry was held and thereafter he has been dismissed by the Management *w.e.f.* 18.01.97.

This matter has been referred to this Tribunal by the Ministry No L-22012/266/2003-IR(C.M.II) dated 23.06.2004 to decide while the action of the Management is legal and justified?

On perusal of the record I find that workman has filed the report of the doctor from which it appears that he was suffering from jaundice during the relevant period and could not attend his duties for two months. It further appears from the document the workman is aged about 40 years. It has been submitted on behalf of the workman that the Management did not consider point No.7 of the

memorandum of settlement in between the Management and Workman in which it has been resolved—"Management agrees reinstate those employees for the reasons absenting for a period of nine months and below 45 yrs of age such case will be considered on merit basis."

On perusal of the Written Statement filed on behalf of the Management, I find from Para-10 that the workman was found unauthorized absent for some occasion for which he was punished. I find that only this ground the Management did not consider the case of the workman in view of the memorandum of Settlement.

In my opinion this time the workman only remain absent for two months and for this absence Medical Certificate has also been filed, but the Management brush aside all the plea of the workman and dismissed him from service—which is no doubt a capital punishment has been awarded to the workman by the Management and threw him and his entire family on road for begging which is against the principle of Natural Justice.

So, in my opinion, the action of the Management of Nakrakonda Colliery under Bankola Area of M/s E.C.L. in dismissing Joydev Bouri, U.G. Loader from service *w.e.f.* 18.1.97 is illegal and not justified, and accordingly the order of the management, above stated, is hereby set aside. The workman Joydev Bouri is fit to be reinstated in Service and he is entitled for 50% back wages.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 836.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इसी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 13/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं. एल-22012/120/1997-आई आर (सीएम-II)]

बीएम० पटनायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 836.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. No. 13/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial

Dispute between the employers in relation to the management of ECL their workman, which was received by the Central Government on 11/03/2013.

[No. L-22012/120/1997-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 13 OF 1998

Parties : The management of J.K. Nagar (R) Mines,
M/s. ECL, Burdwan(WB)

Vs.

The Vice President, CMU(INTUC),
Burdwan(WB.)

Representatives:

For the management : P.K. Das, Ld.
Advocate

For the union (Workman) : None

INDUSTRY: COAL STATE : WEST
BENGAL

Dated - 13.02.13

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/120/97-I.R. (CM-II) dated 09.06.98 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of J.K. Nagar (R) Mines of M/s. ECL in not paying the difference of wages of CDS Operator Grade 'D' to Sh. Sarju Mahato, Telephone Line Man Category IV is legal and justified? If not, to what relief the concerned workman is entitled?"

Having received the Order of Letter No. L-22012/120/97-I.R.(CM-II) dated 09.06.98 of the above said reference from the Govt of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 13 of 1998 was registered on 22.06.98 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and

a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the Union on behalf of the workman has made an endorsement that they are no more interested to proceed with the case further and prayed for the closure of the case. Since the Union does not want to proceed with the case further, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली 11मार्च, 2013

कानून 837.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इसी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असांसोल के पंचाट (संदर्भ संख्या 68/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[सं. एल-22012/4/2006-आई आर (सी एम-II)]

बीएम पटनायक, डेस्क अधिकारी

New Delhi, the 11th March,

S.O. 837.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 68/2006 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, ASANSOL as shown in the Annexure, in the industrial dispute between the management of Bankola Area of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 11/03/2013

[No. L-22012/4/2006-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 68 OF 2006

Parties : The management of Khandra Colliery under Bankola Area of M/s. ECL, Burdwan
Vs.

The Gen Secy. KMC, Asansol (WB)

Representatives:

For the management : Shri P.K. Goswami,
Ld. Advocate

For the union (Workman) : Shri S.K. Pandey, Ld.
Representative

INDUSTRY: COAL STATE : WEST
BENGAL
Dated - 08-02-13

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/4/2006-IR.(CM-II) dated 23.10.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Khandra Colliery under Bankola Area of M/s. Eastern Coalfield Limited, in dismissing Shri Mirza Ghalib *w.e.f.* 7.7.2005 is legal and justified? If not, what relief is the workman entitled?"

Having received the Order of Letter No. L-22012/4/2006-IR.(CM-II) dated 23.10.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 68 of 2006 was registered on 31.10.2006 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

The workman Mirza Ghalib was working as U/G Loader of Khandra Colliery, Bankola Area of M/s Eastern Coalfields Limited and he was dismissed from service with effect from 07.07.2005 on the ground of unauthorized absence from 13.09.2004 to 15.10.2004 on the basis of Enquiry report.

The learned representative of the workman has submitted that the workman had submitted the sick report regarding his absent period, (copy which has been filed), but the enquiry officer did not consider the same nor has been found in the enquiry report. It has further been submitted that it is a fact that the workman was earlier penalized by the Management due to his unauthorized absent. It has further been submitted that the management has taken very harsh step against the workman by dismissing him from service instead of any penalty, hence the action of the Management against the workman

Mirza Ghalib is not legal and justified, and the workman is entitled for reinstate with back wages.

The learned layer of Management has submitted that it is apparent from the enquiry report (Fact Findings) Para 4 that the previous conduct of the workman shows his chequered carrier as he was found habitual unauthorized absentee and he was penalized five times by the Management and in spite of that the workman failed to reform himself, So the Management has taken right decision by dismissing the workman from service.

On perusal of the record I find that the workman has stated before the Enquiry officer that he could not attend the duty due to fear of unknown persons, but no document has been filed in support of it. On perusal of the record I find that on 04.09.07 the learned representative of the workman has filed four (4) documents with a list, and document No. 2 is the copy of Sick Certificate. On perusal of the very Sick Certificate "I find that the same has been issued by one Dr. M.I. Ansari (a private doctor of Asansol which is also admitted by the workman in Para 9 of Cross-Examination) regarding illness from 16.10.04 to 16.04.05 which is apparently not for the relevant period (13.09.2004 to 15.10.2004). So, in my opinion the certificate of the doctor is nothing but a purchased one and reliance can not be given on this very document.

Hence considering the whole facts and circumstances of the case, discussed above, I find and come into conclusion that the workman is habitual unauthorized absentee and he is unable to reform himself even after he was punished five times by the Management. Moreover the workman has filed a Medical Certificate before the Tribunal, which is not for the relevant period, to impress the Tribunal that he (workman) was sick during absent period.

Hence I do not find any irregularity, illegality and unjustified in the action of the Management of Khanda Colliery under Bankola Area of M/S E.C.L. The Management has rightly dismissed the workman from service.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 11 मार्च, 2013

कानून 838—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 71/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2013 को प्राप्त हुआ था।

[एल-22012/422/1998-आई आर (सीएम-II)]

बीएम पटनायक, डेस्क अधिकारी

New Delhi, the 11th March, 2013

S.O. 838.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 71/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL their workman, which was received by the Central Government on 11/03/2013.

[No. L-2012/422/1998-IR(ICM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Shri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 71 OF 1999

Parties : The management of Amritnagar Colly.,
M/s. ECL, Raniganj(WB)

Vs.

The Org. Secy., CMS, Asansol (W.B.)

Representatives:

For the management : None

For the Union (Workman) : None

INDUSTRY: COAL STATE : WEST
BENGAL

Dated—12.02.13

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour *vide* its Order No. L-22012/422/98-I.R. (CM-II) dated 07.07.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Damoda (N) Colliery under Agent Amritnagar Colliery in refusing to provide employment to Sh. Kebla Bhuiya as dependent is justified? If not, to what relief is the workman entitled?"

Having received the Order of Letter No. L-22012/422/98-I.R. (CM-II) dated 07.07.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 71 of 1999 was registered on 23.07.1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements alongwith the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the workman is neither appearing nor taking any step since 2006 despite registered notices. It seems that the workman is now no more interested to proceed with the case further. The case is also too old—1999. As such, the case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 12 मार्च, 2013

कानून।—839 औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार मैं केन्द्रीय सरकार मिनिस्ट्री ऑफ इंडस्ट्रीज और उनके कर्मकारों के बीच अनुसंधान में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिमासिया न्यायालय मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/59/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.3.2013 को प्रत दुआ था।

[सं. एल-36011/02/2013-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 12th March, 2013

S.O.—839 In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGIT-1/59 of 2003) of the Central Government Industrial Tribunal/Labour Court-1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MENLYN TRANSPORT, and their

workman, which was received by the Central Government on 11.03.2013.

[No. L-36011/02/2013-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI CAMP: GOA

Present : JUSTICE G.S. SARRAF
Presiding Officer

REFERENCE NO. CGIT-1/59 OF 2003

Parties : Employers in relation to the management of Menlyn Transport
And
Their workmen

Appearance :

For the first party : Not present.

For the Union : Not present.

State : Maharashtra

Dated the 20th day of February, 2013

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

"Whether the demands raised by the President M.O.H.P. (MPT) Workers' Union, Goa *vide* his letter dated 7.12.2002 (Annexure I-A) on the Management of M/s. Menlyn Transport, Goa is justified? If yes, what relief the workmen are entitled to?"

According to the statement of claim filed by the MOHP (MPT) Workers' Union the employer M/s. Menlyn Transport is a contractor of Mormugao Port Trust (MPT) and is engaged in the business of removal, cleaning of iron-ore spillage. Initially around 170 employees were employed but presently around 94 workmen are employed at Berth No. 9 of Mechanical Ore Handling Plant at MPT and are engaged in the process of removal, cleaning and sweeping of iron-ore spillage. The 99 workmen who have recently been made permanent were also doing the same work as done by the workmen of Menlyn Transport. The salaries and other allowances paid to the permanent khalasis employed by MPT as well as the 99 workmen who have recently been made permanent by MPT and who are doing similar job are paid higher salaries and allowances whereas the salaries paid to the workmen employed by the

Menlyn Transport are very low. These workmen are, therefore, entitled for enhancement and revision in their existing salaries. The employer is in a strong financial position. The demand for an increase of Rs. 40/- per day over and above the existing wage is fair, proper and just. Whenever the workers are required to work on Sundays, holidays and weekly off days they should be paid double the rate of wages and each workman should be paid bonus every year @ 20% on the gross salary earned by him. Thus the demands raised by the Union *vide* letter dt. 7.12.2002 are just, fair and proper and the same be considered in favour of the workmen.

3. Menlyn Transport Company has filed written statement wherein it has stated that the actual number of workmen made permanent is about 40 and the remaining have availed the benefit of voluntary retirement scheme. Those workmen who were found medically fit and within the prescribed age limit of 40 years were made permanent and not other. The wages of the workmen have already been enhanced by Rs. 10/- w.e.f. 12.12.2001 and again Rs. 10/- w.e.f. March 2003 and, therefore, it is not feasible and there is absolutely no justification for considering any further increase. The financial condition of the management is also not sound. The Government has prescribed Rs. 60/- as minimum wage whereas the management pays Rs. 140/- to the workmen. The quantum of work does not warrant overtime work and hence the question of payment of overtime does not arise. The management is already paying bonus @ 10% and there is no justification for its increase. According to the written statement the workmen are not entitled to any relief.

4. The Union has filed rejoinder wherein it has reiterated its stand.

5. After filing statement of claim and written statement the parties have not appeared inspite of service of notices. Neither party has led evidence.

6. There is nothing on the record to show that the demands raised by the Union *vide* letter dt. 7.12.2002 are justified.

The workmen are, therefore, not entitled to any relief.

Award is passed accordingly.

JUSTICE G.S. SARAF, Presiding Officer

नई दिल्ली, 12 मार्च, 2013

का आ.—840 औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I नई दिल्ली के पंचाट (संदर्भ आईडी नं 261/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 83/2013 को प्राप्त हुआ था।

[सं. एल 17012/4/98-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 12th March, 2013

S.O.—840 In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (*I.D. No. 261/2011*) of the Central Government Industrial Tribunal/Labour Court-I, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC OF INDIA and their workman, which was received by the Central Government on 08.03.2013

[No. L-17012/4/98-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 261/2011

Shri Om Pal Singh,
R/o H. No. S-18-B,
New Rajapuri, Uttam Nagar,
New Delhi-110059.

...Workman

Versus

The Sr. Branch Manager,
LIC of India, Local Shopping Centre,
Branch No. 12, Saraswati Vihar,
New Delhi-110034.

...Management

AWARD

Life Insurance Corporation of India (Employment of Temporary Staff) Instructions, 1993 (hereinafter referred to as temporary staff employment scheme) was formulated by Life Insurance Corporation of India (hereinafter referred to as the Corporation) on 28.06.1993 to employ temporary staff in Class III and Class IV posts. Temporary staff could be engaged in situations: (i) permanent vacancy pending recruitment on regular basis, (ii) vacancies arising out of absence on maternity leave of a regular female or when regular employee proceeds on sick leave for a period exceeding one month, and (iii) ad hoc vacancies sanctioned by the Zonal Manager to cope with the work of seasonal nature.

2. Claimant was engaged by the Corporation on 16.12.1996 as peon for 85 days. His services were extended from time to time. However, no extension was given to him after December 1997. Feeling aggrieved by the said act of

the Corporation, claimant raised an industrial dispute before the Conciliation Officer. Since the Corporation contested his claim, conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication *vide* order No. L-17012/4/98-IR(B-II), New Delhi dated 17/25.05.1999 with following terms:

"Whether action of the management of Senior Branch Manager, LIC Branch No. 12, Local Shopping Center, Saraswati Vihar, New Delhi-34, in stopping from duty with effect from 28.01.1998 to Shri Om Pal Singh S/o late Shri Gangabasi, R/o House No. S-18B, New Raja Puri, New Delhi-59, is justified and legal? If not, what relief and benefit the concerned workman is entitled to?"

3. Claim statement was filed by Shri Om Prakash Singh pleading that he was appointed as peon by the Corporation on 16.12.1996, *vide* appointment letter dated 14.12.1996. His monthly salary was Rs. 1600.00 plus other admissible allowances. He worked honestly, diligently and to the entire satisfaction of the Corporation. His attendance was duly marked in attendance register. Though he was appointed on a monthly salary of Rs. 1600.00, subsequently with *mala fide* intention his pay was released at the rate of Rs. 1175.00 per month. He completed 280 days of continuous service with the Corporation. He made a request for regularisation of his services but the Corporation had not paid any heed to his request. Left with no alternative, he raised a demand on 28.01.98 requesting the Corporation to regularise his services. Annoyed with that act, his services were illegally terminated on 04.02.1998. His wages for the month of January 1998 were withheld. No notice of termination of his services was given to him. Neither any charge sheet was served nor departmental enquiry was held against him. Action of termination of his services is illegal and uncalled for. He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

4. Claim was demurred by the Corporation pleading that the claimant was employed purely on temporary basis for a fixed period. After expiry of that period, he ceased to be an employee of the Corporation. Termination of his services has been as a result of non-renewal of the contract and as such it does not amount to retrenchment. Termination of services of the claimant falls within the exception contained in second limb of section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). Claimant was engaged only for a period of 85 days to complete the work accumulated on account of leave accrued to regular employees. In the event of non-completion of specific work, extension could be accorded to him but in no case beyond

period of 120 days. Since there was no renewal of contract of his service, claimant was neither entitled to any notice nor pay in lieu thereof. His claim for reinstatement in service may be dismissed, being devoid of merits, pleads the Corporation.

5. In rejoinder, claimant reiterates facts pleaded in his claim statement.

6. *Vide* order No. Z-22019/6/2007-IR(C-II) New Delhi dated 11.02.2008, the case was transferred to the Central Government Industrial Tribunal No. 2, New Delhi, for adjudication by the appropriate Government. The case was retransferred to this Tribunal for adjudication *vide* order No. Z-22019/6/2007-IR(C-II), New Delhi dated 30.03.2011, by the appropriate Government.

7. The claimant entered the witness box to establish his claim. Shri Gainda Lal also unfolded facts to substantiate claim of his younger brother. Ms. Annu Sachdeva testified facts on behalf of the Corporation. No other witness was examined by either of the parties.

8. Parties were called upon to advance arguments at the bar. Shri L.S. Thakur, authorised representative of the claimant, opted to file written submissions. Shri S.M. Bhatnagar, authorised representative, also submitted written arguments on behalf of the Corporation, instead of raising oral contentions. I have considered the records carefully. My findings on issues involved in the controversy are as follows:

9. In his affidavit Ex. WW1/A, claimant swears that he was appointed as peon by the Corporation on 16.12.1996., *vide* appointment letter dated Ex. WW1/1. He was appointed at a monthly salary of Rs. 1600 plus other allowances admissible under the rules. He served the Corporation with sincerity. Initially his wages were paid @ Rs 1600.00 per month besides allowances. But later on with *mala fide* intention Corporation started paying him only a sum Rs. 1175.00 per month. His wages were paid on vouchers which are Ex. WW1/5 to Ex. WW1/20. He rendered continuous service of 280 days upto 03.02.1998. He raised a demand for regularisation of service, which annoyed the Corporation. His services were illegally dispensed with on 04.02.1998. His wages for the month of January 1998 were not paid. Neither any notice for termination of his service nor any charge sheet was served upon him. Action of the Corporation in terminating his services is uncalled for.

10. Shri Gainda Lal unfolds in his affidavit Ex. WW2/A that his younger brother was employed with the Corporation from 16.12.1996. Initially he was engaged for 85 days from 16.12.1996 to 10.03.1997. He continuously worked with the Corporation for 280 days. His services

were illegally terminated on 04.02.1998. Claimant sent demand notice dated 10.02.1998 for reinstatement in service of the Corporation.

11. In his affidavit Ex. WW1/A tendered as evidence, Ms. Annu Sachdeva details that the claimant was appointed for 85 days by the Corporation *vide* appointment letter Ex. WW1/1. He was paid his salary through account No. 285501 and 285502 for the period from 16.12.1996 to 10.03.1997. Salary of temporary employees is to be paid by the Corporation through above account codes. He worked as a temporary peon and after expiry of his contractual period, his services came to an end.

12. Appointment letter Ex. WW1/1 is put in service by the claimant. When this document is perused, it emerged that the claimant was engaged by the Corporation as a temporary peon for a period for 85 days from 16.12.1996 to 10.03.1997. His temporary appointment was to be governed under the provisions of Temporary Staff Employment Scheme. It was mentioned there in that he was not eligible for projecting claim for regularization of his services. It was further detailed therein that his services would come to an end on completion of period for which he was engaged. Out of contents of appointment letter, it came to light that the claimant was engaged as temporary peon in consonance with temporary staff employment scheme formulated by the Corporation. When above scheme is perused it came to light that the Corporation could employ temporary staff in Class III or Class IV posts in following situations:

- (i) Due to pendency of recruitment of staff on regular basis, against permanent vacancies.
- (ii) Vacancies arising out of absence of maternity leave of regular female employee or when regular employee proceeds on medical leave for a period exceeding one months; and
- (iii) Ad hoc vacancies sanctioned, by the Zonal Manager, to cope up with the work of seasonal nature.

13. In his testimony, Shri Om Prakash Singh announced that his name was sponsored by the Employment Exchange for the post of temporary peon with the Corporation. As unfolded by Shri Gainda Lal, claimant was offered appointment for 85 days as temporary peon from 16.12.1996 to 10.03.1997. These facts get reaffirmation through contents of appointment letter Ex. WW1/1. Though Corporation claims through affidavit of Shri Annu Sachdeva that services of the claimant came to an end on 10.03.1997 yet claimant had proved payment vouchers Ex. WW1/5 to Ex. WW1/20, which documents project a different story. When these payment vouchers are considered, it came to light that after 10.03.1997, claimant rendered 13 days service in March 1996, work for 12 days was taken from him in

April 1997, he attended duties for 19 1/2 days in May, 22 1/2 days in June, 26 days in July, 23 1/2 days in August, 22 days in September, 19 days in October, 21 1/2 days in November and 25 1/2 days in December 1997. Thus it came over the record that he rendered 200 1/2 days service, besides initial 85 days service with the Corporation. In all claimant rendered 285 1/2 days service with the Corporation.

14. As emerged out of the documents, no work was taken from the claimant after December 1997. Question for consideration would be as to whether non-engagement of the claimant after December 1997 would amount to retrenchment. For an answer definition of word "retrenchment", enacted in clause (oo) of section 2 of the Act, needs consideration. For sake of convenience, the said definition is as extracted thus:

"(oo) "retrenchement" means the termination by the employer of the services of a workman for any reasons whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the services of a workman on the ground of continued ill-health".

15. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise than as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents

in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ1] and Mahabir [1979 (II) LLJ 363].

16. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman was a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" presupposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as *modus operandi* to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumantrao Shrike (1990 Lab. I.C. 100) and Balbir Singh [1990 (1) LLJ 443].

17. On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

- "(i) that the provisions of section 2(oo)(bb) are to be construed benevolently in favour of the workman,
- (ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb),
- (iii) that the provisions of section 2(oo)(bb) are not to be interpreted in the manner which may stifle the main provision,
- (iv) that if the workman continues in service, the non-renewal of the contract can be deemed as

mala fide and it may amount to be a fraud on statute.

- (v) that there would be wrong presumption of non-applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

18. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On compliance of the requirements of section 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

19. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in C.M. Venugopal [1994 (1) LLJ 597]. As per fact of the case. Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation, 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

20. In Morinda Co-operative Sugar Mills Ltd. (1996 Lab. I.C. 221) a sugar factory used to employ certain number of workman during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-clause (bb) of section 2(oo) of the Act. It was observed as follows:

"4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view

taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work".

21. Above legal position was reiterated by the Apex Court in *Anil Bapurao Kanase* (1997 (10) S.C.C. 599) wherein it was noted as follows:

"3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.03.1995 in Writ Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In *Morinda Coop. Sugar Mills Ltd. v. Ram Kishan* in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above".

22. In *Harmohinder Singh* (2001 (5) S.C.C. 540) an employee was appointed as a salesman by Kharga canteen on 1.6.74 and subsequently as a cashier on 9.8.75. The letter of appointment and Standing Orders, *inter alia*, provided that his service could be terminated by one month's notice by either party. He was served with a notice to the effect that his service would be relinquished with effect from 30.6.1989. Relying precedent in *Uptron India Ltd.* (1998 (6)

S.C.C. 538) the Apex Court ruled that contract of service for a fixed term are excluded from the ambit of retrenchment. Decision in *Balbir Singh* (supra) was held to be erroneous. It was also ruled that principles of natural justice are not applicable where termination takes place on expiry of contract of service.

23. In *Batala Coop. Sugar Mills Ltd.* (2205 (8) S.C.C. 481) an employee was engaged on casual basis on daily wages for specific work and for a specific period. He was engaged on 1.4.1986 and worked upto 12.2.94. The Labour Court concluded that termination of his services was violative of provisions of section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in *Morinda Coop. Sugar Mills* (supra) and *Anil Bapurao Kanase* (supra) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court can not be maintained.

24. The Apex Court dealt with such a situation again in *Darbara Singh* (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8.1.88 to 29.2.88. His services were extended from time to time and finally dispensed with in June, 1989. The Supreme Court ruled that engagement of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchment. His case was found to be covered under exception contained in sub-clause (bb) of section 2 (oo) of the Act. In *Kishore Chand Samal* (2008 LLR 65), same view was maintained by the Apex Court. It was ruled therein that the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts section 25 F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days. Case of *Darbara Singh* and *Kishore Chand Samal* were found to be relating to fixed term of appointment.

25. In *BSES Yamuna Power Ltd.* (2006 LLR 1144) Rakesh Kumar was appointed as Copyist on 29.9.96, initially for a period of three months as a daily wager. His term of appointment was extended up to 20.9.90. No further extension was given and his services were dispensed with on 20.9.90. On consideration of facts and law High Court of Delhi has observed thus:

".....In the present case, the respondent was appointed as copyist for totalling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months, It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and on temporary basis for specific work of totalling of ledger. When this

work was over, no extension was given. I consider that appointment as that of the respondent is squarely covered under section 2 (oo)(bb) of the Act. Giving of non extension did not amount to termination of service, it was not a case of retrenchment".

26. Precedents, handed down by Allahabad High Court in Shailendra Nath Shukla (supra), Bombay High Court in Dilip Hanumantrao Shirke (supra), Punjab & Haryana High Court in Balbir Singh (supra) and Madhya Pradesh High Court in Madhya Pradesh Bank Karamchari Sangh (supra) castrate sub-clause (bb) of section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of section 2 (oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in C.M. Venugopal (supra), Morinda Co-operative Sugar Mills Ltd. (supra), Anil Bapurao Kanase (supra), Harmohinder Singh (supra), Batala Coop. Sugar Mills Ltd. (supra), Darbara Singh (supra) and Kishore Chand Samal (supra) and High Court of Delhi in BSES Yamuna Power Ltd. (supra) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the case of the claimant.

27. Out of facts unfolded by the claimant and those corroborated by appointment letter Ex.WW/1/1 and vouchers Ex.WW1/5 to Ex.WW1/20, it emerges over the record that initially claimant was engaged for a period of 85 days, with the stipulation that his services would come to an end on expiry of the period for which he was engaged. However, after expiry of the stipulated period services of the claimant were taken by the Corporation, for the periods referred in preceding sections. It is evident that the Corporation extended his terms of employment from time to time in exigencies. His engagement was against leave vacancies and purely temporary in nature. His terms of contract were not renewed any further. His case falls within the ambit of sub-clause (bb) of clause (oo) of section 2 of the Act. Such an act does not amount to retrenchment. When services of the claimant were not retrenched, he is not entitled to benefits of provisions of Section 25-F, 25-G and 25-H of the Act.

28. Appointment of the claimant was in pursuance of temporary staff employment scheme. Claimant could not question contents of the scheme formulated by the Corporation. Question for consideration would be as to

whether on consideration of aspect of social justice, this Tribunal should discard the scheme of temporary staff employment formulated by the Corporation? For consideration of aspects of social justice, the Tribunal has to keep in mind that the Act is a beneficiary legislation calculated to ensure social justice to both employers and employees and advance progress of industry by bringing harmony and cordial relationship between the parties. The Act empowers adjudicating authorities to abrogate conditions in contract of employment, in the interest of social justice. Social and economic justice is ultimate ideal of industrial adjudication. Social and economic justice has been given place of pride in our constitution and doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. See Raibahadur Deewan Badri Das [1962 (II) LLJ 366].

29. Social justice is not based on contractual relations and is not to be enforced on principles of contract of service. It is something outside these principles and invoked to do justice without a contract to back out. Reference can be made to precedent in Rashtriya Mill Mazdoor Sangh [1960 (II) LLJ 263]. In J.K. Cotton Spinning & Weaving Mills Company Ltd. [1963 (II) LLJ 435] the Apex Court ruled that industrial disputes are to be adjudicated laced with the concept of social justice. It would be expedient to reproduce the observations made by the Apex Court which are extracted.

"In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasised the relevance, validity and significance of doctrine of social justice..... Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claim of social justice in dealing with industrial disputes. The concept of social justice is not narrow or one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic idea of socio economic equality and its aim is to assist the removal of socio economic disparities and inequalities."

30. In Ahmedabad Manufacturing and Calico Printing Company Ltd. [1972 (II) LLJ 165] the above principles were reiterated by the Apex Court. Therefore, the law laid down by Apex Court makes it clear that the industrial adjudication cannot and should not ignore the claims of social justice. Same views were expressed in Basti

Sagar Mills Company Ltd. [1978 (II) LLJ 412]. Therefore this Tribunal has to consider the case on the touch stone of social justice also.

31. The claimant wants that offer of appointment for a period of 85 days may be substituted as an offer of appointment on regular post. The terms and conditions of contract between the employer and employee can be interfered with by this Tribunal only when it is found necessary in exigencies of the situation. The Tribunal cannot indiscriminately interfere with the contracts. This discretion, to interfere with the contract contained in Ex. WW1/1, has to be laced with by requirements of social justice. Alas! the claimant has not been able to put forward any fact which may tilt scale of social justice in his favour. As projected by Ms. Sachdeva, appointment, purely on temporary basis, was given to the claimant since vacancies for specific period were created to clear back log of workload accumulated on account of regular employees being on leave and also because recruitment of regular staff through selection process was to take considerable long time. The claimant could not raise eye-brows on facts, so testified by Ms. Sachdeva. The situation/exigencies unfolded by Ms. Sachdeva led the Corporation to formulate Temporary Staff Employment Scheme. Under that scheme the claimant was engaged for a specific period. When vacancy was created to clear backlog created on account of regular employee being on leave, this Tribunal cannot adventure to substitute contract of employment, entered in between the parties, using social justice principles. I do not find any case to substitute the terms of contract, entered into between the parties. No case is, therefore, made out in favour of the claimant.

32. In view of the above reasons, the claim put forward is to be brushed aside. In his written arguments the claimants projected certain facts, which were beyond the evidence adduced in the matter. Those facts cannot espouse his cause. Claim is, accordingly, brushed aside. An award is passed in favour of the Corporation and against the claimant. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer.

Dated: 07-02-2013

नई दिल्ली, 12 मार्च, 2013

का अ 841—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुरांग अधिकारी न्यास के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम न्यायालय 1 मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी 1/43/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.2013 को पात हुआ था।

[सं एल-36011/02/2007-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 12th March, 2013

S.O. 841.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (*Ref. No. CGIT-1/43 of 2007*) of the Central Government Industrial Tribunal/Labour Court-1, MUMBAI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mormugao Port Trust, and their workman, which was received by the Central Government on 11.03.2013.

[No. L-36011/02/2007-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI CAMP: GOA

Present : Justice G.S. SARRAF
Presiding Officer

REFERENCE NO. CGIT-1/43 OF 2007

Parties : Employers in relation to the management of Mormugao Port Trust

And

Their Workmen

Appearances:

For the first party : Shri Vilas A. Biliye,
Representative.

For the Union : Shri C.B. Cautilho, Representative

State : Maharashtra

Dated the 20th day of February, 2013.

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

“Whether the action of the management of Mormugao Port Trust in implementing the Notice of change issued under reference No. CME/EO/2(15A)/2006/4724 dated 4.10.2006 is legal and justiced? If not, to what relief the workmen are entitled?”

2. An application has been filed by General Secretary, Mormugao Port Trust and Railway Workers Union that he does not want to lead any evidence and pursue the matter and, therefore, the reference be disposed of accordingly.

In view of the above application the workmen are not entitled to any

Award is passed accordingly.

Justice G.S. SARRAF, *Presiding Officer.*

नई दिल्ली, 13 मार्च, 2013

का० आ० 842.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं 1, धनबाद के पंचाट (आई डी संख्या 42/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1203 2013 को प्राप्त हुआ था।

[सं एल-20012/163/2005-आई आर (सी-I)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 13th March, 2013

S.O. 842.— in pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (*Ref. No. 42/06*) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 12.03.2013

[No. L-20012/163/2005-IR(C-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD.

IN THE MATTER OF A REFERENCE U/S 10(1)(D)(2A) OF I.D.A.C.T, 1947.

REF. NO. 42 OF 2006

Employers in relation to the management of Sijua Area of M/s. B. C.C.L.

AND

Their Workmen

Present : Sri Ranjan Kumar Saran,
Presiding officer

Appearances:

For the Employers : Sri D.K. Verma,
Advocate

For the Workman : Sir Nitish Sahay, Advocate

State : Dhanbad, (Jharkhand)

Industry : Coal.

Dated. 18.02.2013.

AWARD

By Order No. L-20012/163/2005-IR (CM-I), dt. 01.06.2006, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the dismissal from Service of Sh. Bhuneswar Chamar w.e.f. 31.3.89 (as contended by the management of BCCL, Sijua Area BCCL) was justified, fair & legal in the light of the fact that he was claimed missing since 1985. (2) If not whether the demand of the NCWA from the management that Smt. Bijuli Devi wife of the said workman be given employment under the provisions of NCWA since Sh. Bhuneswar Chamar has been declared "Dead" by the competent authority because of his traceless justified. If so, to what relief is the said dependent entitled?"

2. The case is received from the Ministry of Labour on 20.06.2006. Parties are notice, both parties appeared, the Union files their written statement on 06.04.2009. Hearing commenced. The only point raised in the case, can a deceased workman will be dismissed on the ground of his long absence from duty. The widow of the deceased, raised the dispute.

3. Claims is to declare, dismiss a illegal and prays for compensatory appointment, according to the norms of the company. From the claim statement of the management it appears that, the workman absenting from duty since 01.08.1985.

4. The management without tracing the workman, without knowing his state of affairs conducted enquiry and dismissed the workman on 31.3.1989. Since the workman is unheard of since 1985 and is not traced till today. He can not be dismissed on the ground of long absence.

5. Since the competent authority has already declared the long untraced workman as dead, there is no difficulty to provide compensatory appointment to her dependent wife. In this case management also does not dispute traceless situation of the workman nor disputes the death declaration of the workman.

6. Considering the fact and circumstances the dismissal of Shri Bhuneswar Chamar w.e.f. 31.3.89 is not justified, fair and legal, accordingly the deceased employee dependent be given compensatory employment within 30 days from the date of publication of the award.

This is my award

R.K. SARAN, Presiding Officer

नई दिल्ली, 22 मार्च, 2013

क्रमांक 843 —कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय सरकार एतद्वारा **01 अप्रैल, 2013** का उस तरीख के रूप में नियत करती है जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रकृत हो चुकी है) अध्याय 5 और 6 [धारा-76 की उप धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध **असम राज्य** के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

“कामरूप जिले में दखिनरानी मौजा में राजस्व वाले गांव, जोगीपारा, काहीकुची सहित गुवाहाटी क्षेत्र में सन्निहित बोरझार हवाई-अड्डे के अंतर्गत आने वाले क्षेत्र से बोरझार हवाई-अड्डे तक।

[सं एस-38013/16/2013-एसएस 1]

नरेश जायसवाल, अवर सचिव

New Delhi, the 22nd March, 2013

S.O. 843.—In exercise of the powers & conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government. Hereby appoints the **1st April, 2013** as the date on which the provisions of Chapter IV [except Sub-Section (i) of section 76 and sections 77, 78, 79, and 81 which have

already been brought into force] of the said Act shall come into force in the following areas in the state of **Assam** namely.

"Areas under Borjhar Airport falling within the contiguous areas of Guwahati upto Borjhar Airport including Revenue village-Jogipara, Kahikuchi in the Dakhin Rani Mouza in the Dist. of Makrup.

[No. S-38013/16/2013-S.S.I]

NARESH JAISWAL, Under Sec.

नई दिल्ली, 1 अप्रैल, 2013

क्रमांक 844: भारत के राजपत्र संख्या 12, भाग-II, खंड-3, उप खंड (ii) दिनांक 12032008 में प्रकाशित इस कार्यालय की समसंबंधित अस्थिरता दिनांक 12032012 (संख्या 650) के पृष्ठ संख्या 1333 में 4 कजार नगर हृदकस्त सं 44 को हृदकस्त सं 41 पढ़ा जाए।

[सं एस-38013/16/2008-संसा]

नरेश जायसवाल, अवर सचिव

DORRIGENDUM

New Delhi, the 1st April, 2013

S.O. 844.—In this Ministry notification of even number dated 12.03.2008 (S.O. No. 650), published in the Gazette of India No. 12, Part-II, Section 3, Sub-Sec. (ii) dated 12.03.2008, at page number 1333, in Sl. No. 4 Wazir Nagar Hadbast No. 44 may be read as 41.

[No. S-38013/16/2008 S.S.I.]
NARESH JAISWAL, Under Sec.